

CHAPTER 5

NONJUDICIAL PUNISHMENT

As an LN you will become extensively involved with all aspects of nonjudicial punishment, commonly called either NJP or mast. In this chapter we discuss duties and procedures required before, during, and after NJP proceedings.

Although both commanding officers (COs) and officers in charge (OICs) can conduct mast, we will use only the abbreviation CO in this chapter. For a discussion on the differences between masts held by COs and OICs, see Article 15, *Uniform Code of Military Justice* (UCMJ), and part V of the *Manual for Courts-Martial* (MCM).

The term *nonjudicial punishment* and the abbreviation NJP are used interchangeably. They refer to certain limited punishments that can be awarded for minor disciplinary offenses by a CO to members of his or her command. Nonjudicial punishment proceedings are called captain's mast or simply mast.

Article 15 of the UCMJ, part V of the MCM, 1984, and part B of chapter 1 of the *Manual of the Judge Advocate General* (JAGMAN) are the basic laws about nonjudicial punishment procedures. The legal protection afforded an individual subject to NJP proceedings is more complete than is the case for nonpunitive measures, but, by design, is less extensive than for courts-martial. NJP is not administrative and is nonadversarial in nature. When punishment is imposed it is not considered a conviction, and when a case is dismissed it is not considered an acquittal.

The word *mast* also is used to describe three different types of proceedings: request mast, meritorious mast, and disciplinary mast. Request mast is a hearing before the CO, at the request of service personnel, for making requests, reports, statements, and for airing grievances. Meritorious mast is for the purpose of publicly and officially commending a member of the command for noteworthy performance of duty. This chapter discusses disciplinary mast. When we use the term *mast*, that is what is meant.

Mast is a procedure where the CO may (1) inquire into the facts surrounding minor offenses allegedly committed by a member of his or her command, (2) afford the accused a hearing as to the offense(s), and (3) dispose of such charges by dismissing the charges,

imposing punishment, or referring the case to a court-martial.

NATURE AND REQUISITE OF NONJUDICIAL PUNISHMENT

Nonjudicial punishment is a disciplinary measure more serious than administrative corrective measures, but less serious than trial by court-martial. Nonjudicial punishment provides commanders with an essential and prompt means of maintaining good order and discipline and also promotes positive behavior changes in service members without the stigma of a court-martial conviction.

WHO MAY IMPOSE NJP

Authority to impose nonjudicial punishment under Article 15, UCMJ, maybe exercised by a CO, an OIC, or by certain officers to whom the power has been delegated by the Secretary of the Navy (SECNAV).

In the Navy and Marine Corps, billet designations by the Chief of Naval Personnel and Headquarters Marine Corps identify those persons who are commanding officers. So the term *commanding officer* has a precise meaning and is not used arbitrarily.

The power to impose NJP is inherent in the office and not in the individual. Thus, the power may be exercised by a person acting as CO, such as when the CO is on leave and the executive officer (XO) succeeds to command.

OICs exist in the naval service. An OIC is a commissioned officer appointed as an OIC of a unit by departmental orders, tables of organization, manpower authorizations, orders of a flag or general officer in command, or orders of the senior officer present.

Ordinarily, the power to impose NJP cannot be delegated. One exception is that a flag or general officer in command may delegate all or a portion of his or her Article 15 powers to a principal assistant. A principal assistant is a senior officer on a flag or general officer's staff who is eligible to succeed to command. This delegation must be made with the express approval of the Chief of Naval Personnel or the Commandant of the Marine Corps.

Additionally, where members of the naval service are assigned to a multiservice command, the commander of such multiservice command may appoint one or more naval units and for each unit designate a commissioned officer of the naval service as CO for NJP purposes over the unit. A copy of such designation must be furnished to the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate, and to the Judge Advocate General (JAG).

No officer may limit or withhold the exercise of any disciplinary authority under Article 15 by subordinate commanders without the specific authorization of SECNAV.

If a CO determines that his or her authority under Article 15 is not enough to make a proper disposition of the case, he or she may refer the case to a superior commander for appropriate disposition.

This situation could arise either when the CO's NJP powers are less extensive than those of his or her superior, or when the status of higher authority would add force to the punishment, as in the case of a letter or reprimand or admonition.

PERSONS ON WHOM NJP MAY BE IMPOSED

A CO may impose NJP on all military personnel of his or her command. An OIC may impose NJP only on enlisted members assigned to the unit that he or she is in charge of.

At the time punishment is imposed, the accused must be a member of the command of the CO (or of the unit of the OIC) who imposes the NJP. A person is of the command or unit if he or she is assigned or attached to it. This includes temporary additional duty (TEMADD) personnel. TEMADD personnel may be punished either by the CO of the unit that they are TEMADD to or by the CO of the duty station that they are permanently attached to. Note, however, that both COs cannot punish an individual under Article 15 for the same offense. In addition, a party to a *JAG Manual* investigation remains of the command or unit that he or she was attached to at the time of his or her designation as a party for the sole purpose of imposing a letter of admonition or reprimand as NJP.

Personnel of Another Armed Force

Under present agreements between the armed forces, a Navy CO should not exercise NJP jurisdiction on Army or Air Force personnel assigned or attached to

a naval command. As a matter of policy, return these personnel to their parent-service unit for discipline. If this is impractical and the need to discipline is urgent, NJP maybe imposed, but a report to the Department of the Army or Department of the Air Force is required. See the *Naval Military Personnel Manual* (MILPERMAN), Article 1860320.5a and 5b, for the procedures to follow.

Express agreements do not extend to Coast Guard personnel serving with a naval command, but other policy statements say that the naval command should not try to exercise NJP over such personnel assigned to its unit. Refer to section 1-3(c), *Coast Guard Military Justice Manual*, COMDTINST M5801.1.

Because the Marine Corps is part of the Department of the Navy, no general restriction extends to the exercise of NJP by Navy commanders over Marine Corps personnel or by Marine Corps commanders over Navy personnel.

Imposition of NJP on Embarked Personnel

The CO or OIC of a unit attached to a ship for duty should, as a matter of policy, refrain from exercising his or her power to impose NJP and refer all such matters to the CO of the ship for disposition. This policy does not apply to Military Sealift Command (MSC) vessels operating under masters or to organized units embarked on a Navy ship for transportation only. Nevertheless, the CO of a ship may permit a CO or an OIC of a unit attached to that ship to exercise NJP authority.

Imposition of NJP on Reservists

Reservists on active duty for training or, under some circumstances, inactive duty for training, are subject to the UCMJ and, therefore, subject to the imposition of NJP.

The offense(s) that the CO or OIC seeks to punish at NJP must have occurred while the member was on active duty or inactive duty training. However, it is not necessary that NJP occurs (or the offense even be discovered) before the end of the active duty or inactive duty training period during which the alleged misconduct occurred. In that regard, the officer seeking to impose NJP has the following options:

- He or she may impose NJP during the active duty or inactive duty training when the misconduct occurred.

- He or she may impose NJP at a later period of active duty or inactive duty training (so long as this is within 2 years of the date of the offense).

- He or she may request from the regular component officer exercising general court-martial jurisdiction (OEGCMJ) over the accused an involuntary recall of the accused to active duty or inactive duty training to impose NJP.

- If the accused waives his or her right to be present at the NJP hearing, the CO or OIC may impose NJP after the period of active duty or inactive duty training of the accused has ended.

Punishment imposed upon persons who were involuntarily recalled for imposition of NJP may not include restraint unless SECNAV approves the recall.

Right of an Accused to Demand Trial by Court-Martial

Article 15a, UCMJ, and part V, par. 3, MCM, 1984, provide another limitation on the exercise of NJP. Except for a person attached to or embarked in a vessel, an accused may demand trial by court-martial in lieu of NJP.

This right to refuse NJP exists up until the time of imposition of NJP (that is, up until the CO announces the punishment). This right is not waived by the accused having previously signed a report chit showing that he or she would accept NJP.

The category of persons who may not refuse NJP includes those persons assigned or attached to a vessel who are on board for passage or assigned or attached to an embarked staff, unit, detachment, squadron, team, air group, or other regularly organized body.

The key time factor in determining whether or not a person has the right to demand trial by court-martial is the time of the imposition of the NJP and not the time of the commission of the offense. There is no power for a CO or an OIC to impose NJP on a civilian.

OFFENSES PUNISHABLE UNDER ARTICLE 15, UCMJ

Article 15 gives a CO power to punish individuals for minor offenses. The term *minor offense* has been the cause of some concern in the administration of nonjudicial punishment.

Article 15, UCMJ, and part V, par. 1e, MCM, say that the term *minor offense* means misconduct normally

not more serious than that usually handled at an summary court-martial (SCM) (where the maximum punishment is 30 days' confinement). These sources also say that the nature of the offense and the circumstances surrounding its commission are also factors that should be considered in determining whether an offense is minor in nature.

The term *minor offense* ordinarily does not include misconduct that, if tried by a general court-martial (GCM), could be punished by a dishonorable discharge (DD) or confinement for more than 1 year. The Navy and Marine Corps, however, have taken the position that the final determination of whether an offense is minor is within the sound discretion of the CO.

Maximum Penalty

To determine if the offense is minor, begin the analysis with a consultation of the punitive articles (part IV, MCM, 1984) and determine the maximum punishment for the offense. Although the MCM does not so state, if the authorized confinement is 30 days to 3 months, the offense is most likely a minor offense. If the authorized confinement is 6 months to 1 year, the offense may be minor. However, if authorized confinement is 1 year or more, the offense is usually not minor.

Nature of the Offense and Circumstances Surrounding Its Commission

The MCM, 1984, also states that, in determining whether an offense is minor, the nature of the offense and the circumstances surrounding its commission should be considered. This is a significant statement and often is misunderstood as referring to the seriousness or gravity of the offense. Gravity refers to the maximum punishment. In contrast, the nature of the offense refers to its character, not its gravity.

In military criminal law, there are two basic types of misconduct—disciplinary infractions and crimes. Disciplinary infractions are breaches of standards governing the routine functioning of society. Thus, traffic laws, license requirements, disobedience of military orders, and disrespect to military superiors are disciplinary infractions. Crimes, on the other hand, involve offenses recognized as particularly evil. Crimes are acts of robbery, rape, murder, aggravated assault, and larceny. Both types of offenses involve a lack of self-discipline, but crimes involve a particular gross absence of self-discipline amounting to a moral deficiency. Crimes are the product of a mind particularly disrespectful of good moral standards.

In most cases, criminal acts are not minor offenses. However, they are serious or minor depending upon circumstances and, thus, while some disciplinary offenses carry severe maximum penalties, the law recognizes that the impact of some of these offenses on discipline will be slight.

The circumstances surrounding the commission of a disciplinary infraction are important to the determination of whether such an infraction is minor. For example, willful disobedience of an order to take ammunition to a unit engaged in combat can have fatal results for those engaged in the fight and is a serious matter. Willful disobedience of an order to report to the barber-shop may have much less impact on discipline. The offense must provide both extremes, and it does because of a high maximum punishment limit.

When dealing with disciplinary infractions, the commander must be free to consider the impact of the circumstance since he or she is considered the best judge of it. However, in disposing of crimes, society at large has an interest coexistent with that of the command, and criminal defendants are given more safeguards. The commander's discretion in disposing of disciplinary infractions is much greater than his or her latitude in dealing with crimes.

The Navy has taken the position that the final determination of what is a minor offense is within the sound discretion of the CO. Imposition of NJP does not, in all cases, prevent a later court-martial for the same offense. See part V, par. 1e, MCM, 1984.

Cases Previously Tried in Civil Court

Sections 0108b and 0124c(2) of the JAGMAN permit the use of NJP to punish an accused for an offense that he or she has been (1) tried (whether acquitted or convicted) by a domestic or foreign civilian court, (2) diverted out of the regular criminal process for a probationary period, or (3) adjudicated by juvenile court authorities. This is true only if authority is obtained from the OEGCMJ (usually the general or flag officer in command over the command desiring to impose nonjudicial punishment).

NJP may not be imposed for an act tried by a court that derives its authority from the United States, such as a federal district court.

Cases in which a finding of guilt or innocence has been reached in a trial by court-martial cannot be taken to NJP.

Off-Base Offenses

COs and OICs may dispose of minor disciplinary infractions that occur on base or off base at NJP. Unless the off-base offense is a traffic offense or one previously adjudicated by civilian authorities, there is no limit on the authority of military commanders to resolve such offenses at NJP.

In areas not under military control, the responsibility for maintaining law and order rests with civil authority. The enforcement of traffic laws falls within the purview of this principle. Off-duty, off-installation driving offenses, however, show inability and lack of safety consciousness. Such driving performance does not prevent the use of nonpunitive measures that could include denial of on-installation driving privileges.

THE NJP PACKAGE

The NJP package, as we will refer to it, includes numerous documents and forms along with any evidence on the case. As we will discuss, strict compliance with filling out the forms is essential to a proper NJP proceeding.

REPORT AND DISPOSITION OF OFFENSE(S)

Your office may receive notification that an offense has been committed in a variety of ways. These ways can include a shore patrol report, a verbal complaint by a victim, or a local report chit. Except when serious crimes are involved, charges are reduced to writing on the Report and Disposition of Offense(s), NAVPERS 1626/7, and processed in the manner prescribed by the form itself.

The NAVPERS 1626/7 is a one-sheet (back and front) form. It is not a substitute for a charge sheet and it is not a substitute for the pretrial investigation required by Article 32, UCMJ. However, so long as the offense(s) remains in the group of cases to be handled by the CO at mast, this one form satisfies most paper work requirements of a mast proceeding. Among the functions the NAVPERS 1626/7 serves are the following:

- It reports the offense(s).
- It records that the accused has been advised of his or her rights under Article 31, UCMJ.
- It records any premast restraint.
- It serves as a preliminary inquiry report.

- It records the action of the XO at screening mast.
- It records that the accused has been advised of the right to refuse NJP (if that right exists under the circumstances of the case).
- It shows the action of the CO at mast.
- It records that appeal rights have been explained to the accused.
- It becomes a permanent record of the case in the Unit Punishment Book (UPB). No additional record is needed such as 3 x 5 cards or a mast logbook.

Remember, however, that the NAVPERS 1626/7 does not include all the required premast advice that must be given to the accused according to the JAG-MAN, section 0109.

PREPARATION INSTRUCTIONS

Regardless of how the commission of a minor offense is brought to your attention, you will probably need to prepare the smooth NAVPERS 1626/7. Figure 5-1 illustrates a completed NAVPERS 1626/7. Let's look at the information that you will place on this form.

Referring to figure 5-1, section A, start with addressing the report to the OIC or CO of the accused. Fill in the date of the report. Type the name of the accused in last name, first name, middle initial order. Verify the social security number from the accused's service record and type it in. Type in the present rate of the accused and the branch and class of service. Designate the department or division that the accused is attached to. Fill in the place of the offense. If there is more than one place, list all applicable places of the offense(s). Show the date of the commission of the offense. If there is more than one date, show all dates.

In the section entitled Details of the Offense, it is not mandatory that you type the offenses in the manner that you would on a charge sheet. However, this is good practice. If you always prepare a specification in full detail, you will not have to change it in the event the charges are referred to a court-martial.

List military witnesses to the offense in order of seniority, followed by civilian witnesses, if any. If the witnesses are attached to the same command as the offender, it is only necessary to give the witness' division or department. If the witness is attached to another command, identify that command completely. If a witness is a civilian, give the complete address, business

and home, if available. Finally, be sure to get the signature of the person placing the accused on report.

Section B of figure 5-1 shows the acknowledgement of the accused having been informed of the nature of the accusation(s) against him or her and his or her right not to answer any questions relating to the offense. After the accused is formally informed of the accusations against him or her, this section should be signed by the accused and the person informing the accused of his or her rights. If the accused refuses to sign this section, that fact must be witnessed by the person informing the accused of the accusations who will sign attesting to that fact.

Section C of figure 5-1 shows any premast restraint of the accused. If the accused is not being restricted, put the entry in the No Restrictions block. On the other hand, if the accused is placed on restriction or placed in confinement pending investigation of the charges, you will either mark the Pretrial Confinement block or the Restricted block. If the Restricted block is used, fill in the restricted to the limits of portion. Be sure to get the signature and title of the person who is imposing the restraint.

Section D of figure 5-1 shows information about the accused. Get the accused's service record before filling out this section to verify all the information. In the section Record of Previous Offense(s), list all NJPs and courts-martial during the accused's current enlistment.

PREMAST SCREENING

After you complete the front of the NAVPERS 1626/7, the case must touch two more bases before it is ready for hearing by the CO. The first step is to refer the report chit to an officer or a senior enlisted person for a preliminary inquiry that will later be screened by the XO.

PRELIMINARY INQUIRY

At small commands, refer the cases to division officers for the preliminary inquiry. At large commands, the discipline officer or the legal officer is delegated the authority to appoint the preliminary inquiry officer (PIO). You need to fill in the name of the PIO at the top of section E on figure 5-1 before referring it to the PIO for action.

It is not the job of the PIO to develop a case against the accused. Rather, the PIO is to collect all available

REPORT AND DISPOSITION OF OFFENSE(S)
NAVPERS 1626/7 (REV. 8-81) B/N 0106-LF-016-2838

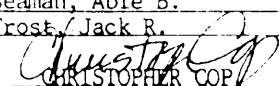
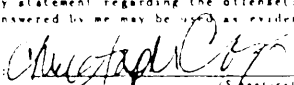
| | | | |
|--|---|--|--|
| To: Commanding Officer, <u>Naval Base, Norfolk, Virginia</u> | | Date of Report: <u>14 April 1993</u> | |
| 1. I hereby report the following named person for the offense(s) noted: | | | |
| NAME OF ACCUSED | SERIAL NO | SOCIAL SECURITY NO | RATE/GRADE |
| Door, Water T. | | 222-22-2222 | BM3 |
| PLACE OF OFFENSE(S) | DATE OF OFFENSE(S) | | |
| Naval Base, Norfolk, Virginia | 7 and 8 April 1993 | | |
| DETAILS OF OFFENSE(S) (Refer by article of UCMJ, if known. If unauthorized absence, give following info: time and date of commencement, whether over leave or liberty, time and date of apprehension or surrender and arrival on board, loss of ID card and/or liberty card, etc.): Charge: Violation of the Uniform Code of Military Justice, Article 121 Specification 1: In that Boatswain's Mate Third Class Water T. Door, U.S. Navy, Naval Base, Norfolk, Virginia, on active duty, did, on board Naval Base, Norfolk, Virginia, on or about 7 April 1993, steal two \$50 bills, of a value of about \$100.00, the property of BM3 Able B. Seaman, U.S. Navy. Specification 2: In that Boatswain's Mate Third Class Water T. Door, U.S. Navy, Naval Base, Norfolk, Virginia, on active duty, did, on board Naval Base, Norfolk, Virginia, on or about 8 April 1993, steal one \$20 bill, of a value of about \$20.00, the property of BM1 Igot Robbed, U.S. Navy. | | | |
| NAME OF WITNESS | RATE/GRADE | DIV/DEPT | NAME OF WITNESS |
| Doe, John A. | LT | OPS | Pistol, Very C. |
| Boat, Jon T. | BMC | OPS | Seaman, Able B. |
| Robbed, Igot | BM1 | OPS | Frost, Jack R. |
| MAC, USN, Base Security Chief | |  CHRISTOPHER COP (Signature of person submitting report) | |
| I have been informed of the nature of the accusation(s) against me. I understand I do not have to answer any questions or make any statement regarding the offense(s) of which I am accused or suspected. However, I understand any statement made or questions answered by me may be used as evidence against me in event of trial by court-martial (Article 31, UCMJ). Witness:  Acknowledged: <u>Water T. Door</u> (Signature) (Signature of Accused) | | | |
| PRE-TRIAL RESTRAINT | <input type="checkbox"/> PRETRIAL CONFINEMENT <input checked="" type="checkbox"/> NO RESTRICTIONS <input type="checkbox"/> RESTRICTED: You are restricted to the limits of _____ in lieu of arrest by order of the CO. Until your status as a restricted person is terminated by the CO, you may not leave the restricted limits except with the express permission of the CO or XO. You have been informed of the times and places which you are required to muster. | | |
| (Signature and title of person imposing restraint) | | (Signature of Accused) | |
| INFORMATION CONCERNING ACCUSED | | | |
| CURRENT ENL DATE | EXPIRATION CURRENT ENL DATE | TOTAL ACTIVE NAVAL SERVICE | TOTAL SERVICE ON BOARD |
| 02 Jan 1990 | 01 Jan 1994 | 3 year 3 months | 18 months |
| MARITAL STATUS | NO. DEPENDENTS | CONTRIBUTION TO FAMILY OR OTHER ALLOWANCE (Amount required by law) | PAY PER MONTH (including inc. or foreign duty pay, if any) |
| Married | 5 | N/A | \$1,250.20 |
| RECORD OF PREVIOUS OFFENSE(S) (Date, type, action taken, etc. Nonjudicial punishment incidents are to be included.) 19 June 1991: CO's NJP OFFENSE: Viol UCMJ Art. 92 - Failure to obey a lawful order on 16 June 1991. NJP AWARDED: Restriction to the limits for a period of 14 days and extra duty for a period of 14 days. | | | |

Figure 5-1A.—Report and Disposition of Offense(s), NAVPERS 1626/7 (front).

| PRELIMINARY INQUIRY REPORT | | | | | | |
|---|--|--|--|--|--|--|
| From: Commanding Officer To: ENS Floss A. Brush, USN, Supply Department | | | | Date: 15 April 1993 | | |
| 1. Transmitted herewith for preliminary inquiry and report by you, including, if appropriate in the interest of justice and discipline, the preferring of such charges as appear to you to be sustained by expected evidence. | | | | | | |
| REMARKS OF DIVISION OFFICER (Performance of duty, etc.) BM3 Door is a capable and conscientious worker. He has been experiencing financial difficulties that appear to have been the basis of this misconduct. | | | | | | |
| E | NAME OF WITNESS | | RATE/GRADE | DIV/DEPT | NAME OF WITNESS | |
| | SEE FRONT OF REPORT CHIT | | | | | |
| RECOMMENDATION AS TO DISPOSITION: <input type="checkbox"/> REFER TO COURT MARTIAL FOR TRIAL OF ATTACHED CHARGES (Complete Charge Sheet (DD Form 458) through Page 2) | | | | | | |
| <input checked="" type="checkbox"/> DISPOSE OF CASE AT MAST <input type="checkbox"/> NO PUNITIVE ACTION NECESSARY OR DESIRABLE <input type="checkbox"/> OTHER | | | | | | |
| Summary of Evidence: Statements of LT Doe, BMC Boat, and BMSN Frost (enclosures (1), (2), and (3)) state that they saw BM3 Door remove the money from the personal desks of BM1 Robbed and BM3 Seaman. BMC Boat also states in his statement that he has personally counselled BM3 Door on numerous occasions concerning indebtedness and was aware that BM3 Door was experiencing money problems. In view of the seriousness of the offense, NJP is recommended. | | | | | | |
| F | <input type="checkbox"/> DISMISSED <input checked="" type="checkbox"/> REFERRED TO CAPTAIN'S MAST | | ACTION OF EXECUTIVE OFFICER <i>Mary N. Christmas</i> MARY N. CHRISTMAS, CDR, USN | | | |
| | RIGHT TO DEMAND TRIAL BY COURT-MARTIAL (Not applicable to persons attached to or embarked in a vessel) | | | | | |
| G | I understand that nonjudicial punishment may not be imposed on me if, before the imposition of such punishment, I demand in lieu of trial by court-martial. I therefore (do) (do not) demand trial by court-martial. | | | | | |
| | <i>Christopher</i> CHRISTOPHER COP, MA1, USN | | | <i>Water T. Door</i> WATER T. DOOR | | |
| H | ACTION OF COMMANDING OFFICER | | | | | |
| | <input type="checkbox"/> DISMISSED <input type="checkbox"/> DISMISSED WITH WARNING (Not considered NJP) <input type="checkbox"/> ADMONITION: ORAL/IN WRITING <input type="checkbox"/> REPRIMAND: ORAL/IN WRITING <input type="checkbox"/> REST. TO _____ FOR _____ DAYS <input type="checkbox"/> REST. TO _____ FOR _____ DAYS WITH SUSP. FROM DUTY <input type="checkbox"/> FORFEITURE: TO FORFEIT \$ _____ PAY PER MO. FOR _____ MO(S) | | | <input type="checkbox"/> CONF. ON _____, 1, 2, OR 3 DAYS <input type="checkbox"/> CORRECTIONAL CUSTODY FOR _____ DAYS <input type="checkbox"/> REDUCTION TO NEXT INFERIOR PAY GRADE <input checked="" type="checkbox"/> REDUCTION TO PAY GRADE OF E-3 <input checked="" type="checkbox"/> EXTRA DUTIES FOR 45 DAYS <input type="checkbox"/> PUNISHMENT SUSPENDED FOR _____ <input type="checkbox"/> ART. 32 INVESTIGATION <input type="checkbox"/> RECOMMENDED FOR TRIAL BY GCM | | |
| | <input type="checkbox"/> DETENTION: TO HAVE \$ _____ PAY PER MO. FOR (1, 2, 3) MO(S) DETAINED FOR _____ MO(S) | | | <input type="checkbox"/> AWARDED BCM <input type="checkbox"/> AWARDED SCM | | |
| | DATE OF MAST 18 April 1993 | | DATE ACCUSED INFORMED OF ABOVE ACTION 18 April 1993 | | SIGNATURE OF COMMANDING OFFICER <i>Imma Boss</i> IMMA BOSS, CAPT, USN | |
| I | It has been explained to me and I understand that if I feel this imposition of nonjudicial punishment to be unjust or disproportionate to the offense charged against me, I have the right to immediately appeal my conviction to the next higher authority within _____ days. | | | | | |
| | SIGNATURE OF ACCUSED <i>Water T. Door</i> WATER T. DOOR | | DATE 18 April 1993 | | I have explained the above rights of appeal to the accused. SIGNATURE OF WITNESS <i>J. Doe</i> , LNC, USN DATE 18 Apr 93 | |
| J | FINAL ADMINISTRATIVE ACTION | | | | | |
| | APPEAL SUBMITTED BY ACCUSED DATED None | | | FINAL RESULT OF APPEAL | | |
| | FORWARDED FOR DECISION ON _____ | | | FILED IN UNIT PUNISHMENT BOOK | | |
| | APPROPRIATE ENTRIES MADE IN SERVICE RECORD AND PAY ACCOUNT, WHERE REQUIRED DATE 19 Apr 93 | | | DATE 19 Apr 93 | | |
| NAVPERS 1626/7 (REV. 8-81)(BACK) | | | | | | |

Figure 5-1B.—Report and Disposition of Offense(s), NAVPERS 1626/7 (back).

| PRELIMINARY INQUIRY OFFICER'S REPORT IN THE CASE OF _____ | | | | | |
|---|---|---|---|---|------------|
| 1. Read paragraph in MCM concerning offenses/charges: Yes <input style="width: 50px;" type="checkbox"/> | | | | | |
| 2. Witnesses interviewed (not the accused): | | | | | |
| (NAME) | (PHONE) | SIGNED STATEMENT ATTACHED | or | SUMMARY OF INTERVIEW ATTACHED | |
| a. _____ | _____ | <input style="width: 50px;" type="checkbox"/> | or | <input style="width: 50px;" type="checkbox"/> | |
| b. _____ | _____ | <input style="width: 50px;" type="checkbox"/> | or | <input style="width: 50px;" type="checkbox"/> | |
| c. _____ | _____ | <input style="width: 50px;" type="checkbox"/> | or | <input style="width: 50px;" type="checkbox"/> | |
| d. _____ | _____ | <input style="width: 50px;" type="checkbox"/> | or | <input style="width: 50px;" type="checkbox"/> | |
| e. _____ | _____ | <input style="width: 50px;" type="checkbox"/> | or | <input style="width: 50px;" type="checkbox"/> | |
| f. _____ | _____ | <input style="width: 50px;" type="checkbox"/> | or | <input style="width: 50px;" type="checkbox"/> | |
| 3. Accused's supervisor(s) interviewed: | | | | | |
| a. _____ | _____ | <input style="width: 50px;" type="checkbox"/> | or | <input style="width: 50px;" type="checkbox"/> | |
| b. _____ | _____ | <input style="width: 50px;" type="checkbox"/> | or | <input style="width: 50px;" type="checkbox"/> | |
| 4. Documentary evidence: | | | | | |
| | (ORIG) | | (COPY) / (ATTACHED) | | (LOCATION) |
| a. _____ | <input style="width: 50px;" type="checkbox"/> | or | <input style="width: 50px;" type="checkbox"/> | <input style="width: 50px;" type="checkbox"/> | or _____ |
| b. _____ | <input style="width: 50px;" type="checkbox"/> | or | <input style="width: 50px;" type="checkbox"/> | <input style="width: 50px;" type="checkbox"/> | or _____ |
| c. _____ | <input style="width: 50px;" type="checkbox"/> | or | <input style="width: 50px;" type="checkbox"/> | <input style="width: 50px;" type="checkbox"/> | or _____ |
| d. _____ | <input style="width: 50px;" type="checkbox"/> | or | <input style="width: 50px;" type="checkbox"/> | <input style="width: 50px;" type="checkbox"/> | or _____ |
| 5. Real evidence: | | | | | |
| (DESCRIPTION) | (NAME OF CUSTODIAN) | (CUSTODIAN'S PHONE) | | | |
| a. _____ | _____ | _____ | | | |
| b. _____ | _____ | _____ | | | |
| 6. Permit the accused to inspect report chit: Yes _____ No _____ | | | | | |
| 7. Accused initialed second page of charges (if any): N/A Yes _____ No _____ | | | | | |
| 8. Accused signed acknowledgement line of NAVPERS 1626/7: Yes _____ No _____ | | | | | |
| 9. Investigator signed witness line on NAVPERS 1626/7: Yes _____ No _____ | | | | | |
| 10. Accused waived his or her rights: Yes _____ No _____ | | | | | |
| 11. Accused made statement (only when #10 is Yes), and | | | | | |
| a. <input style="width: 50px;" type="checkbox"/> | Accused's signed statement attached. | | | | |
| b. <input style="width: 50px;" type="checkbox"/> | Summary of interrogation attached. | | | | |

Figure 5-2.—Sample preliminary inquiry officer's report.

facts about the offense itself and about the background the accused. You should have a standard form that the PIO prepares for submission to the CO. Figure 5-2 is a good example of what should be included in a PIO's report.

The suspect's rights acknowledgement/statement (fig. 5-3) contains a suggested format that may be used by investigative personnel in cases in which criminal suspects desire to waive their rights on self-incrimination and to make statements. This format is designed as

| SUSPECT'S RIGHTS ACKNOWLEDGEMENT/STATEMENT (See JAGMAN 0170) | | | |
|--|-----|-----------|------------------|
| FULL NAME (ACCUSED/SUSPECT) | SSN | RATE/RANK | SERVICE (BRANCH) |
| ACTIVITY/UNIT | | | DATE OF BIRTH |
| NAME (INTERVIEWER) | SSN | RATE/RANK | SERVICE (BRANCH) |
| ORGANIZATION | | BILLET | |
| LOCATION OF INTERVIEW | | TIME | DATE |
| RIGHTS I certify and acknowledge by my signature and initials set forth below that, before the interviewer requested a statement from me, he/she warned me that: (1) I am suspected of having committed the following offense(s); _____ _____ <input style="width: 50px; height: 20px; border: 1px solid black;" type="text"/> | | | |
| (2) I have the right to remain silent; ----- <input style="width: 50px; height: 20px; border: 1px solid black;" type="text"/> | | | |
| (3) Any statement I do make may be used as evidence against me in trial by court-martial; --- <input style="width: 50px; height: 20px; border: 1px solid black;" type="text"/> | | | |
| (4) I have the right to consult with lawyer counsel prior to any questioning. This lawyer counsel may be a civilian lawyer retained by me at my own expense, a military lawyer appointed to act as my counsel without cost to me, or both; and ----- <input style="width: 50px; height: 20px; border: 1px solid black;" type="text"/> | | | |
| (5) I have the right to have such retained civilian lawyer and/or appointed military lawyer present during this interview. ----- <input style="width: 50px; height: 20px; border: 1px solid black;" type="text"/> | | | |
| WAIVER OF RIGHTS I further certify and acknowledge that I have read the above statement of my rights and fully understand them, ----- <input style="width: 50px; height: 20px; border: 1px solid black;" type="text"/> | | | |

Figure 5-3. Suspect's rights acknowledgement/statement.

and that,

(1) I expressly desire to waive my right to remain silent; -----

☐

(2) I expressly desire to make a statement; -----

☐

(3) I expressly do not desire to consult with either a civilian lawyer retained by me or a military lawyer appointed as my counsel without cost to me prior to questioning; -----

☐

(4) I expressly do not desire to have such a lawyer present with me during this interview; and --

☐

(5) This acknowledgement and waiver of rights is made freely and voluntarily by me, and without any promises or threats having been made to me or pressure or coercion of any kind having been used against me. -----

☐

SIGNATURE (ACCUSED/SUSPECT)

TIME

DATE

SIGNATURE (INTERVIEWER)

TIME

DATE

SIGNATURE (WITNESS)

TIME

DATE

The statement that appears on this page (and the following ___ page(s), all of which are signed by me) is made freely and voluntarily by me, and without any promises or threats having been made to me or pressure or coercion of any kind having been used against me.

SIGNATURE (ACCUSED/SUSPECT)

Figure 5-3.-Suspect's rights acknowledgement/statement—Continued.

a guide and its use is not mandatory. However, you should provide the PIO with this form in case the accused desires to make a statement.

In addition to filling out a PIO's report, the PIO completes section E of figure 5-1 by doing the following:

- Inserting a short resume of the division officer's opinion of the accused
- Listing the names of the witnesses whose presence at mast is necessary to dispose of the case
- Recommending disposition of the case
- Summarizing the evidence that supports the recommendation

The recommendation of the PIO is not binding on the CO.

After the PIO has completed his or her inquiry, the report chit, preliminary inquiry report, and all statements are sent to the CO for a determination of whether disposition by NJP is appropriate.

PREHEARING ADVICE

If, after the preliminary inquiry, the CO determines that disposition by NJP is appropriate, the CO must make sure the accused is given the advice outlined in part V, par. 4, MCM, 1984. The CO need not give the advice personally but may assign this responsibility to the legal officer, discipline officer, or another appropriate person. The advice that must be given includes the following:

- Contemplated action—this informs the accused that the CO is considering the imposition of NJP for the offense(s).

- Suspected offense(s)—this describes the suspected offense(s) to the accused. The description should include the specific article(s) of the UCMJ that the accused is alleged to have violated.

- Government evidence—this advises the accused of the information that the allegations are based on. It also informs the accused that, upon request, he or she is allowed to examine all available statements and evidence.

- Right to refuse NJP—unless the accused is attached to or embarked in a vessel (in which case he or she has no right to refuse NJP), this informs the accused of his or her right to demand trial by court-martial in lieu of NJP. The accused must also be informed (1) of

the maximum punishment imposable at NJP, (2) that if he or she demands trial by court-martial, referral of the charges to trial by an SCM, an SPCM, or a GCM is possible, (3) that he or she cannot be tried by a special court-martial (SPCM) over his or her objection, and (4) that at an SPCM or a GCM he or she has the right to representation by counsel.

- Right to confer with independent counsel—because an accused who is not attached to or embarked in a vessel has the right to refuse NJP, this informs the accused of his or her right to confer with independent counsel about his or her decision to accept or refuse the NJP. This advice must be given to make sure the record of that NJP is admissible in evidence against the accused should he or she ever be tried by court-martial. A failure to advise an accused properly of his or her right to confer with counsel, or a failure to provide counsel, will not, however, render the imposition of NJP invalid or make a ground for appeal. Therefore, if the command imposing the NJP desires that the record of the NJP be admissible for court-martial purposes, you must prepare the record of the NJP according to applicable service regulations and show that:

1. the accused was advised of his or her right to confer with counsel;
2. the accused either exercised his or her right to confer with counsel or made a knowing, intelligent, and voluntary waiver of this right; and
3. the accused knowingly, intelligently, and voluntarily waived his or her right to refuse NJP. All such waivers must be in writing.

- Hearing rights—the accused is entitled to appear personally before the CO for the NJP hearing if he or she did not demand trial by court-martial or if the right to demand trial by court-martial is not applicable. At such a hearing the accused is entitled to:

1. be informed of his or her rights under Article 31, UCMJ;
2. be accompanied by a spokesperson provided by, or arranged for, the member (the proceedings should not be unduly delayed to permit the presence of the spokesperson, nor is the spokesperson entitled to travel or similar expenses);
3. be informed of the evidence against him or her relating to the offense;

4. be allowed to examine all evidence that the CO will rely on in deciding whether and how much NJP to impose;

5. present matters in defense, extenuation, and mitigation, orally, in writing, or both;

6. have witnesses present. These witnesses can include those adverse to the accused, upon request, if (a) their statements will be relevant, (b) they are reasonably available, (c) their appearance will not require reimbursement by the government, (d) their appearance will not unduly delay the proceedings, or in the case of a military witness, (e) will not necessitate their being excused from other important duties; and

7. have the proceedings open to the public unless the CO determines that the proceedings should be closed.

FORMS

The form that you must use to record that the accused was informed of his or her prehearing rights will depend upon the status of the accused.

The accused's notification and election of rights (figs. 5-4, 5-5, and 5-6), also illustrated in appendixes A-1-b, A-1-c, and A-1-d of the JAGMAN, comply with the previous requirements of prehearing advice to the accused.

Use appendix A-1-b, figure 5-4, when the accused is attached to or embarked in a vessel.

Use appendix A-1-c, Figure 5-5, when an accused is not attached to or embarked in a vessel, and the command does not afford the accused the right to consult with a lawyer to assist the accused in deciding whether to accept or reject NJP. In this case the record of NJP will not be admissible for any purpose at any later court-martial.

Use appendix A-1-d, figure 5-6, when an accused is not attached to or embarked in a vessel, and the command affords the accused the right to consult with a lawyer before deciding whether to accept or reject NJP.

The use and retention of the proper form are essential. Whatever form you use, attach it to the NAVPERS 1626/7 and retain it in the command's unit punishment book (UPB).

In the event punishment is imposed at captain's mast, and appendix A-1-d, figure 5-6, is used, or the accused is represented by a lawyer at the hearing, you will need to document the Booker rights advice on a

page 13 of the member's service record book. This is necessary because appendix a-1-d, figure 5-6, stays in the command's UPB. If the member transfers out of the area and is later charged with offenses that are referred to a court-martial, the trial counsel (TC) can prove Booker rights advice was given with the page 13. As an example, the page 13 should state the following:

(Grade and name of accused) signed JAG Manual, appendix A-1-d, before his or her captain's mast which was held on (date of captain's mast). The accused [talked to a lawyer before deciding whether to demand trial by court-martial in lieu of captain's mast] [gave up his or her right to talk to a lawyer before deciding whether to demand trial by court-martial in lieu of captain's mast]. The accused was advised that acceptance of nonjudicial punishment does not preclude further administrative action. In completing the remainder of the form, the accused did not demand trial by court-martial in lieu of captain's mast.

If the accused is represented by a military or civilian lawyer as a personal representative at his or her captain's mast, the following example should be made on a page 13:

(Grade and name of accused) received punishment at captain's mast on (date). The accused was represented by a lawyer.

If the member refuses to sign the forms, simply record that you advised the member of his or her rights but he or she declined to sign the forms. Note that the member must demand trial by court-martial and if he or she fails to make such to demand, the command may proceed with NJP. Once all prehearing advice is given, the accused is ready for the XO's screening.

EXECUTIVE OFFICER'S SCREENING

The XO may screen a case by holding an informal hearing or may merely review the record of the accused and the report chit. If the XO has been given the power by the CO, he or she may dismiss the case, but may never impose punishment.

At the XO's screening mast the accused is advised again of the right to refuse NJP and demand a trial by court-martial. At this point section G of figure 5-1 can be signed by the accused if it was not signed before. Be sure to get the witness' signature in this section also.

Remember Article 15, UCMJ, does not give the right to refuse NJP to persons attached to vessels. Also

(CAPTAIN'S MAST) (OFFICE HOURS)
ACCUSED'S NOTIFICATION AND ELECTION OF RIGHTS
ACCUSED ATTACHED TO OR EMBARKED IN A VESSEL
(See JAGMAN 0109)

Notification and election of rights concerning the contemplated imposition of nonjudicial punishment in the case of _____, SSN _____, assigned or attached to _____.

NOTIFICATION

1. In accordance with the requirements of paragraph 4 of Part V, MCM, 1984, you are hereby notified that the commanding officer is considering imposing nonjudicial punishment on you because of the following alleged offenses:

(Note: Here describe the offenses, including the UCMJ article(s) allegedly violated.)

2. The allegations against you are based on the following information:

(Note: Here provide a brief summary of that information.)

3. You may request a personal appearance before the commanding officer or you may waive this right.

a. Personal appearance waived. If you waive your right to appear personally before the commanding officer, you will have the right to submit any written matters you desire for the commanding officer's consideration in determining whether or not you committed the offenses alleged, and, if so, in determining an appropriate punishment. You are hereby informed that you have the right to remain silent and that anything you do submit for consideration may be used against you in a trial by court-martial.

b. Personal appearance requested. If you exercise your right to appear personally before the commanding officer, you shall be entitled to the following rights at the proceeding:

(1) To be informed of your rights under Article 31(b), UCMJ;

(2) To be informed of the information against you relating to the offenses alleged;

(3) To be accompanied by a spokesperson provided or arranged for by you. A spokesperson is not entitled to travel or similar expenses, and the proceedings will not be delayed to permit the presence of a spokesperson. The spokesperson may speak on your behalf, but may not question witnesses except as the commanding officer may permit as a matter of discretion. The spokesperson need not be a lawyer;

(4) To be permitted to examine documents or physical objects against you that the commanding officer has examined in the case and on which the commanding officer intends to rely in deciding whether and how much nonjudicial punishment to impose;

(5) To present matters in defense, extenuation, and mitigation orally, in writing, or both;

Figure 5-4.—Accused's notification and election of rights. Accused attached to or embarked in a vessel.

(6) To have witnesses attend the proceeding, including those that may be against you, if their statements will be relevant and they are reasonably available. A witness is not reasonably available if the witness requires reimbursement by the United States for any cost incurred in appearing, cannot appear without unduly delaying the proceedings, or if a military witness, cannot be excused from other important duties; and

(7) To have the proceedings open to the public unless the commanding officer determines that the proceedings should be closed for good cause. However, this does not require that special arrangements be made to facilitate access to the proceedings.

ELECTION OF RIGHTS

4. Knowing and understanding all of my rights as set forth in paragraphs 1 through 3 above, my desires are as follows:

a. Personal appearance. (Check one)

_____ I request a personal appearance before the commanding officer.

_____ I waive a personal appearance. (Check one)

_____ I do not desire to submit any written matters for consideration.

_____ Written matters are attached.

(Note: The accused's waiver of personal appearance does not preclude the commanding officer from notifying the accused, in person, of the punishment imposed.)

b. Election at personal appearance. (Check one or more)

_____ I request that the following witnesses be present at my nonjudicial punishment proceeding:

_____ I request that my nonjudicial punishment proceeding be open to the public.

(Signature of witness)

(Signature of accused)

(Name of witness)

(Name of accused)

Figure 5-4.—Accused's notification and election of rights. Accused attached to or embarked in a vessel—Continued.

(CAPTAIN'S MAST) (OFFICE HOURS)
ACCUSED'S NOTIFICATION AND ELECTION OF RIGHTS
ACCUSED NOT ATTACHED TO OR EMBARKED IN A VESSEL
RECORD CANNOT BE USED IN AGGRAVATION IN EVENT OF LATER
COURT-MARTIAL UNLESS LAWYER SERVES AS PERSONAL REPRESENTATIVE
(See JAGMAN 0109)

Notification and election of rights concerning the contemplated imposition of nonjudicial punishment in the case of _____, SSN _____, assigned or attached to _____.

NOTIFICATION

1. In accordance with the requirements of paragraph 4 of Part V, MCM, 1984, you are hereby notified that the commanding officer is considering imposing nonjudicial punishment on you because of the following alleged offenses:

(Note: Here describe the offenses, including the UCMJ article(s) allegedly violated.)

2. The allegations against you are based on the following information:

(Note: Here provide a brief summary of that information.)

3. You have the right to refuse imposition of nonjudicial punishment. If you refuse nonjudicial punishment, charges could be referred for trial by court-martial by summary, special, or general court-martial. If charges are referred to trial by summary court-martial, you may not be tried by summary court-martial over your objection. If charges are referred to a special or general court-martial, you will have the right to be represented by counsel. The maximum punishment that could be imposed if you accept nonjudicial punishment is:

4. If you decide to accept nonjudicial punishment, you may request a personal appearance before the commanding officer or you may waive this right.

a. Personal appearance waived. If you waive your right to appear personally before the commanding officer, you will have the right to submit any written matters you desire for the commanding officer's consideration in determining whether or not you committed the offenses alleged, and, if so, in determining an appropriate punishment. You are hereby informed that you have the right to remain silent and that anything you do submit for consideration may be used against you in a trial by court-martial.

b. Personal appearance requested. If you exercise your right to appear personally before the commanding officer, you shall be entitled to the following rights at the proceeding:

(1) To be informed of your rights under Article 31(b), UCMJ;

(2) To be informed of the information against you relating to the offenses alleged;

(3) To be accompanied by a spokesperson provided or arranged for by you. A spokesperson is not entitled to travel or similar expenses, and the proceedings will not be delayed to permit the presence of a spokesperson. The spokesperson may speak on your behalf, but may not question witnesses except as the commanding officer may permit as a matter of discretion. The spokesperson need not be a lawyer;

Figure 5-5.—Accused's notification and election of rights. Accused not attached to or embarked in a vessel. Record cannot be used in aggravation in event of later court-martial unless lawyer serves as personal representative.

(4) To be permitted to examine documents or physical objects against you that the commanding officer has examined in the case and on which the commanding officer intends to rely in deciding whether and how much nonjudicial punishment to impose;

(5) To present matters in defense, extenuation, and mitigation orally, in writing, or both;

(6) To have witnesses attend the proceeding, including those that may be against you, if their statements will be relevant and they are reasonably available. A witness is not reasonably available if the witness requires reimbursement by the United States for any cost incurred in appearing, cannot appear without unduly delaying the proceedings, or, if a military witness, cannot be excused from other important duties; and

(7) To have the proceedings open to the public unless the commanding officer determines that the proceedings should be closed for good cause. However, this does not require that special arrangements be made to facilitate access to the proceedings.

ELECTION OF RIGHTS

5. Knowing and understanding all of my rights as set forth in paragraphs 1 through 4 above, my desires are as follows:

a. Right to refuse nonjudicial punishment. (Check one)

_____ I refuse nonjudicial punishment.

_____ I accept nonjudicial punishment.

(Note: If the accused does not accept nonjudicial punishment, the matter should be submitted to the commanding officer for disposition.)

b. Personal appearance. (Check one)

_____ I request a personal appearance before the commanding officer.

_____ I waive a personal appearance. (Check one)

_____ I do not desire to submit any written matters for consideration.

_____ Written matters are attached.

(Note: The accused's waiver of personal appearance does not preclude the commanding officer from notifying the accused, in person, of the punishment imposed.)

c. Election at personal appearance. (Check one or more)

_____ I request that the following witnesses be present at my nonjudicial punishment proceeding:

_____ I request that my nonjudicial punishment proceeding be open to the public.

(Signature of witness)

(Signature of accused)

(Name of accused)

(Name of witness)

Figure 5-5.—Accused's notification and election of rights. Accused not attached to or embarked in a vessel. Record cannot be used in aggravation in event of later court-martial unless lawyer serves as personal representative—Continued.

(CAPTAIN'S MAST) (OFFICE HOURS)
ACCUSED'S NOTIFICATION AND ELECTION OF RIGHTS
ACCUSED NOT ATTACHED TO OR EMBARKED IN A VESSEL
RECORD MAY BE USED IN AGGRAVATION IN EVENT OF LATER COURT-MARTIAL
(See JAGMAN 0109)

Notification and election of rights concerning the contemplated imposition of nonjudicial punishment in the case of _____, SSN _____ assigned or attached to _____.

NOTIFICATION

1. In accordance with the requirements of paragraph 4 of Part V, MCM, 1984, you are hereby notified that the commanding officer is considering imposing nonjudicial punishment on you because of the following alleged offenses:

(Note: Here describe the offenses, including the UCMJ article(s) allegedly violated.)

2. The allegations against you are based on the following information:

(Note: Here provide a brief summary of that information.)

3. You have the right to refuse imposition of nonjudicial punishment. If you refuse nonjudicial punishment, charges could be referred for trial by court-martial by summary, special, or general court-martial. If charges are referred to trial by summary court-martial, you may not be tried by summary court-martial over your objection. If charges are referred to a special or general court-martial, you will have the right to be represented by counsel. The maximum punishment that could be imposed if you accept nonjudicial punishment is: _____.

4. If you decide to accept nonjudicial punishment, you may request a personal appearance before the commanding officer or you may waive this right.

a. Personal appearance waived. If you waive your right to appear personally before the commanding officer, you will have the right to submit any written matters you desire for the commanding officer's consideration in determining whether or not you committed the offenses alleged, and, if so, in determining an appropriate punishment. You are hereby informed that you have the right to remain silent and that anything you do submit for consideration may be used against you in a trial by court-martial.

b. Personal appearance requested. If you exercise your right to appear personally before the commanding officer, you shall be entitled to the following rights at the proceeding:

(1) To be informed of your rights under Article 31(b), UCMJ;

(2) To be informed of the information against you relating to the offenses alleged;

(3) To be accompanied by a spokesperson provided or arranged for by you. A spokesperson is not entitled to travel or similar expenses, and the proceedings will not be delayed to permit the presence of a spokesperson. The spokesperson may speak on your behalf, but may not question witnesses except as the commanding officer may permit as a matter of discretion. The spokesperson need not be a lawyer;

(4) To be permitted to examine documents or physical objects against you that the commanding officer has examined in the case and on which the commanding officer intends to rely in deciding whether and how much nonjudicial punishment to impose;

(5) To present matters in defense, extenuation, and mitigation orally, in writing, or both;

(6) To have witnesses attend the proceeding, including those that may be against you, if their statements will be relevant and they are reasonably available. A witness is not reasonably available if the witness requires reimbursement by the United States for any cost incurred in appearing, cannot appear without unduly delaying the proceedings, or if a military witness, cannot be excused from other important duties; and

(7) To have the proceedings open to the public unless the commanding officer determines that the proceedings should be closed for good cause. However, this does not require that special arrangements be made to facilitate access to the proceedings.

Figure 5-6.—Accused's notification and election of rights. Accused not attached to or embarked in a vessel. Record may be used in aggravation in event of later court-martial.

5. In order to help you decide whether or not to demand trial by court-martial or to exercise any of the rights explained above should you decide to accept nonjudicial punishment, you may obtain the advice of a lawyer prior to any decision. If you wish to talk to a lawyer, a military lawyer will be made available to you, either in person or by telephone, free of charge, or you may obtain advice from a civilian lawyer at your own expense.

ELECTION OF RIGHTS

6. Knowing and understanding all of my rights as set forth in paragraphs 1 through 5 above, my desires are as follows:

a. Lawyer: (Check one or more, as applicable)

_____ I wish to talk to a military lawyer before completing the remainder of this form.

_____ I wish to talk to a civilian lawyer before completing the remainder of this form.

_____ I hereby voluntarily, knowingly, and intelligently give up my right to talk to a lawyer.

(Signature of witness)

(Signature of accused/date)

(Note: If the accused wished to talk to a lawyer, the remainder of this form shall not be completed until the accused has been given a reasonable opportunity to do so.)

_____ I talked to _____, a lawyer, on _____.

(Signature of witness)

(Signature of accused/date)

b. Right to refuse nonjudicial punishment. (Check one)

_____ I refuse nonjudicial punishment.

_____ I accept nonjudicial punishment.

(Note: If the accused does not accept nonjudicial punishment, the matter should be submitted to the commanding officer for disposition.)

c. Personal appearance. (Check one)

_____ I request a personal appearance before the commanding officer.

_____ I waive a personal appearance. (Check one)

_____ I do not desire to submit any written matters for consideration.

_____ Written matters are attached.

(Note: The accused's waiver of personal appearance does not preclude the commanding officer from notifying the accused, in person, of the punishment imposed.)

d. Election at personal appearance. (Check one or more)

_____ I request that the following witnesses be present at my nonjudicial punishment proceeding:

_____ I request that my nonjudicial punishment proceeding be open to the public.

(Signature of witness)

(Signature of accused)

(Name of witness)

(Name of accused)

Figure 5-6.—Accused's notification and election of rights. Accused not attached to or embarked in a vessel. Record may be used in aggravation in event of later court-martial—Continued.

remember that an accused not attached to or embarked in a vessel may elect at any time before imposition of NJP to refuse it and demand a court-martial. It is, then, possible for an accused to elect not to demand trial by court-martial at the XO's screening but later at captain's mast demand it provided it is before any punishment is imposed.

Once the XO has conducted an inquiry, he or she has the option of referring the case to mast or dismissing it. The XO fills in section F of figure 5-1 noting the action he or she has taken. If the case is referred to the CO for mast, a formal hearing is set up.

THE HEARING PROCEDURE

Captain's mast is held at the time and place decided on by the CO. The XO, legal officer, or discipline officer

normally assists the CO. Additionally, a master-at-arms will be present to keep order and call the accused to mast. Your function will be to have the service record of the accused and other associated documents available for the CO.

While local practices will come into play as far as setting up the mast and the formalities required, appendix A-1-e of the JAGMAN, figure 5-7, is the official guide for the NJP proceedings.

HEARING REQUIREMENTS

Except as noted in the following paragraph, NJP cases must be handled at a hearing whereby the accused is allowed to exercise the foregoing rights. In addition, there are other technical requirements about the hearing and the exercise of the accused's rights.

CAPTAIN'S MAST GUIDE

(NOTE: The formalities before and after captain's mast normally are determined by customs and tradition of the Navy.)

CO: You are suspected of committing the following violation(s) of the Uniform Code of Military Justice:

You do not have to make any statement regarding the offense(s) of which you are accused or suspected and any statement made by you may be used as evidence against you.

(NOTE: If it is reasonably foreseeable that the accused's statements during the captain's mast proceedings may be considered for introduction in evidence at a later court-martial, an explanation of rights and a waiver, in the format of appendix A-1-m of the JAG Manual, will have to be obtained from the accused, during the hearing, before proceeding further.)

CO: You are advised that a captain's mast is not a trial and that a determination of misconduct on your part is not a conviction by a court. Further, you are advised that the formal rules of evidence used in trials by court-martial do not apply at captain's mast.

CO: I have a statement signed by you acknowledging that you were fully advised of your legal rights pertaining to this hearing. (NOTE: This statement will be JAGMAN, appendix A-1-b, A-1-c, or A-1-d.)

CO: Do you understand this statement and do you understand the rights explained therein?

ACC: _____.

CO: Do you have any questions about them or do you wish to make any requests?

ACC: _____.

Figure 5-7. Captain's mast guide.

CO: [To witness (if any are present)] What can you tell me about the accused's involvement in (these) (this) offense(s)?

WIT: _____.

CO: [To witness(es) who has/have previously provided written statement(s) when accused and CO both have copies of the statement(s).] Do you adopt your statement(s) as your testimony here today?

ACC: _____.

CO: Do you have anything to add to or change in your statement?

ACC: _____.

CO: (To accused) Would you like me to ask any further questions of this witness?

ACC: _____.

CO: (After all witnesses are questioned) I have before me the following (documents) (statements) (other physical evidence) that will be considered by me. Have you been given the opportunity to examine them?

ACC: _____.

CO: (If there is a "no," offer the accused the opportunity to examine the evidence.)

CO: Is there anything that you wish to offer? (If the answer is "yes," permit the accused the opportunity to call his or her witnesses, make a personal statement in defense, and present other evidence.)

ACC: _____.

CO: Are there any other witnesses you would like to call or any other evidence you would like to present?

ACC: _____.

CO: (To witness) What can you tell me about (accused's name) performance of duty?

WIT: _____.

CO: (To accused) Is there anything else you would like to present?

ACC: _____.

CO: I impose the following punishment:

_____.

My decision to impose this punishment was based on my determination that you committed the minor offenses of:

_____.

You are advised that you have the right to appeal this punishment to (identify the superior authority by name and organizational title). Your appeal must be made within a reasonable time—which is normally 5 days. Following this hearing _____ will advise you more fully of this right to appeal. Do you understand?

ACC: _____.

CO: You are dismissed.

Figure 5-7.—Captain's mast guide-Continued.

Personal Appearance Waived

Part V, par. 4c(2), MCM, 1984, provides that if the accused waives his or her right to appear personally before the CO, he or she may submit written matters for consideration by the CO before the imposition of NJP. If the accused makes this election, inform the accused of his or her right to remain silent and that any matters submitted may be used against him or her at a trial by court-martial.

Notwithstanding the accused's expressed desire to waive his or her right to appear personally at the NJP hearing, he or she may be ordered to attend the hearing if the officer imposing NJP desires his or her presence. If the accused waives his or her personal appearance and NJP is imposed, the CO must make sure the accused is informed of the punishment as soon as possible.

Hearing Officer

Normally, the officer who actually holds the NJP hearing is the CO of the accused. COs or OICs are allowed to delegate their authority to hold the hearing to another officer under extraordinary circumstances. These circumstances must be unusual and significant rather than matters of convenience to the commander. This delegation of authority should be in writing and the reasons for it detailed. This delegation, however, does not include the authority to impose punishment. At such a hearing, the officer delegated to hold the hearing will receive all evidence, prepare a summarized record of matters considered, and send the record to the officer having NJP authority.

Burden of Proof

The CO must decide that the accused is guilty by a preponderance of the evidence. *Black's Law Dictionary* defines preponderance of evidence as "evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it"

Personal Representative

The burden of getting a representative is on the accused. As a practical matter, the accused is free to choose anyone he or she wants—a lawyer or a nonlawyer, an officer or an enlisted person. This freedom of the accused to choose a representative does not compel the command to provide lawyer counsel, and current regulations do not create a right to lawyer counsel at NJP where such a right exists at court-martial.

Representation by any lawyer who is willing and able to appear at the hearing is available to the accused. While a lawyer's workload may prevent the lawyer from appearing, a blanket rule that no lawyers will be available to appear at Article 15 hearings would appear to contravene the spirit if not the letter of the law. It is likewise doubtful that a lawyer can lawfully be ordered to represent the accused. It is fair to say that the accused can have anyone who is able and willing to appear on his or her behalf without cost to the government. While a command does not have to provide a personal representative, it should help the accused get the representative he or she wants. In this connection, if the accused desires a personal representative, allow him or her a reasonable time to get someone. Use good judgment here, for such a period should be neither too short nor too long.

Witnesses

When the hearing involves controverted questions of fact about the alleged offenses, witnesses should be available to testify if they are present on the same ship or base or are otherwise available at no expense to the government. Thus, in a larceny case, if the accused denies that he or she took the money, the witnesses who can testify that the accused did take the money should be called to testify in person if they are available at no cost to the government. It should be noted, however, that no authority exists to subpoena civilian witnesses for an NJP proceeding.

Public Hearing

The accused is entitled to have the hearing open to the public unless the CO determines that the proceeding should be closed for good cause. The CO is not required to make any special arrangements to facilitate public access to the proceedings.

Publication of NJP Results

Authority to publish the results of NJP is granted by the JAGMAN, section 0115. You may publish the name, rate, offense(s), and disposition of the offender in the plan of the day (POD). Publish the results not later than 1 month after the imposition of NJP. If the NJP is appealed, publish the results not later than 1 month after the date the appeal is denied. If the POD is distributed to military personnel only, you may include all the details stated previously. If the POD is distributed to other than military personnel, NJP results may be published without the name of the accused.

| IMPOSED BY | IMPOSED ON | CONFINEMENT ON B&W OR DIN RATS (2) | CORRECTIONAL CUSTODY (2) | ARREST IN QUARTERS (1) | FORFEITURE (6) (5) | REDUCTION (6) (8) | EXTRA DUTIES (4) | RESTRICTION TO LIMITS (4) | ADMONITION (6) | REPRIMAND (6) |
|---------------|---------------|---|--------------------------------|---------------------------------|---------------------------|----------------------|------------------------|------------------------------------|-------------------|------------------|
| GENERAL | OFFICERS | NO | NO | 30 days | 1/2 one mo. for 2 mos. | NO | NO | 60 days | YES | YES |
| OFFICERS | E-4 to E-9 | NO | NO | NO | 1/2 one mo. for 2 mos. | 1 grade | 45 days | 60 days | YES | YES |
| IN | E-1 to E-3 | 3 days | 30 days | NO | 1/2 one mo. for 2 mos. | 1 grade | 45 days | 60 days | YES | YES |
| COMMAND | E-1 to E-3 | 3 days | 30 days | NO | 1/2 one mo. for 2 mos. | 1 grade | 45 days | 60 days | YES | YES |
| O-4 | OFFICERS | NO | NO | NO | NO | NO | NO | 30 days | YES | YES |
| to | E-4 to E-9 | NO | NO | NO | 1/2 one mo. for 2 mos. | 1 grade | 45 days | 60 days | YES | YES |
| O-6 | E-1 to E-3 | 3 days | 30 days | NO | 1/2 one mo. | 1 grade | 45 days | 60 days | YES | YES |
| O-3 | OFFICERS | NO | NO | NO | NO | NO | NO | 15 days | YES | YES |
| Below | E-4 to E-9 | NO | NO | NO | 7 days | 1 grade | 14 days | 14 days | YES | YES |
| and | E-1 to E-3 | 3 days | 7 days | NO | 7 days | 1 grade | 14 days | 14 days | YES | YES |
| OIC's (7) | | | | | | | | | | |

(1) May not be combined with restriction

(2) May be awarded only if attached to/embarked in a vessel and may not be combined with any other restraint punishment or extra duties

(3) May not be combined with restriction or extra duties

(4) Restriction and extra duties may be combined to run concurrently but the combination may not exceed the maximum imposable for extra duties

(5) Shall be expressed in whole dollar amounts only

(6) May be imposed in addition to or instead of all other punishments

(7) OIC's have NJP authority over enlisted personnel only

(8) Chief petty officers, paygrades E-7 thru E-9, may not be reduced at NJP in the Navy; while Marine Corps NCOs, paygrades E-6 thru E-9, may not be reduced at NJP-

Figure 5-8.—Limits of punishments under UCMJ, Article 15.

POSSIBLE ACTIONS BY THE CO AT MAST

Dismissal with or without warning —this action is taken if the CO is not convinced by the evidence that the accused is guilty of an offense or decides that no punishment is appropriate in light of the accused's record and other circumstances. Dismissal, whether with or without a warning, is not considered NJP, nor is it considered an acquittal.

Referral to an SCM, SPCM, or a pretrial investigation under Article 32, UCMJ —the CO may in his or her

sole discretion, refer the charge(s) to an SCM, an SPCM or an Article 32 investigation. This will, of course, depend upon the severity of the charges.

Postponement of action —the CO can postpone any action on the NJP pending further investigation or for other good cause, such as a pending trial by civil authorities for the same offense.

Imposition of NJP —the CO may impose NJP and award any of the authorized punishments outlined in part V, par. 5, MCM.

AUTHORIZED PUNISHMENTS

If the CO is convinced by the evidence that the accused is guilty of the offense(s) and he or she deems punishment is proper, the CO has wide latitude to impose punishment. There are, however, limitations that are placed on the CO based upon his or her rank and the status of the accused.

LIMITATIONS

The maximum imposable punishment in any Article 15, UCMJ, case is limited by several factors that include the following:

- The grade of the imposing officer—COs in grades O-4 to O-6 have greater punishment powers than officers in grades O-1 to O-3. Flag officers, general officers, and OEGCMJs have greater punishment authority than COs in grades O-4 to O-6.

- The status of the imposing officer—regardless of the rank of an OIC, his or her punishment power is limited to that of a CO in grades O-1 to O-3. The punishment powers of a CO are commensurate with his or her permanent grade.

- The status of the accused—punishment authority is also limited by the status of the accused. Is the accused an officer or an enlisted person attached to or embarked in a vessel?

Maximum punishment limitations apply to each NJP action and not to each offense. Note that there is a policy that all known offenses that the accused is suspected of should ordinarily be considered at a single Article 15 hearing. Figure 5-8 summarizes the maximum punishment limitations for NJP.

MAXIMUM LIMITS—SPECIFIC

There are specific maximum limits on punishment that may be imposed on an individual. Depending upon whether the accused is an officer, a warrant officer, or an enlisted person will depend on the type of punishment that may be imposed. Also the rank of the official imposing the punishment is a limiting factor on the amount and type of punishment that may be awarded. A flow chart demonstrating this follows:

1. Upon commissioned officers and warrant officers

a. Imposed by an OEGCMJ, an officer of general or flag rank in command, or designated principal assistant:

(1) Punitive admonition or reprimand.

(2) Arrest in quarters for not more than 30 consecutive days.

(3) Restriction to specified limits, with or without suspension from duty, for not more than 60 consecutive days.

(4) Forfeiture of not more than 1/2 of 1 month's pay per month for 2 months.

b. Imposed by any CO:

(1) Admonition or reprimand.

(2) Restriction to specified limits, with or without suspension from duty for more than 30 consecutive days.

c. Imposed by an OIC: OICs do not have the authority to impose NJP upon officers.

2. Upon enlisted accused

a. If imposed by COs of the grade of lieutenant commander or above or a principal assistant:

(1) Admonition or reprimand.

(2) If imposed upon a person attached to or embarked in a vessel, confinement on bread and water or diminished rations for not more than 3 consecutive days. Accused must be in the paygrade of E-3 or below.

(3) Correctional custody for not more than 30 consecutive days and only on grades E-3 and below.

(4) Forfeiture of not more than 1/2 of 1 month's pay per month for 2 months.

(5) Reduction of one paygrade for members in paygrades E-6 and below. Reduction is not imposable on E-7 and above (Navy) or on E-6 and above (Marine corps).

(6) Extra duties for not more than 45 consecutive days.

(7) Restriction to specified limits for not more than 60 consecutive days.

b. Imposed by COs in grades O-3 and below, or any commissioned OIC:

(1) Admonition or reprimand.

(2) Confinement on bread and water or diminished rations for not more than 3 consecutive days and only on grade E-3 and below attached to or embarked in a vessel.

(3) Correctional custody for not more than 7 consecutive days and only on grades E-3 and below.

(4) Forfeiture of not more than 7 days' pay.

(5) Reduction to the next inferior paygrade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction. Reduction is not imposable on E-7 and above (Navy) and E-6 and above (Marine Corps).

(6) Extra duties for not more than 14 consecutive days.

(7) Restriction for not more than 14 consecutive days.

NATURE OF THE PUNISHMENT

There are eight specific types of punishment that may, under proper circumstances, be imposed as NJP. Remember that there are limitations that are based upon the CO's rank and the status of the offender. Refer to figure 5-8 as you read the discussion of individual punishments that follows.

Admonition and Reprimand

Admonition and reprimand are two forms of censure intended to express adverse reflection upon or criticism of a person's conduct. A reprimand is a more severe form of censure than an admonition. When imposed as NJP, the admonition or reprimand is considered to be punitive, unlike the nonpunitive admonition and reprimand. Punitive censure for officers must be in writing, although it may be either oral or written for enlisted personnel. Procedures for issuing punitive letters are detailed in the JAGMAN, section 0114. A sample punitive letter of reprimand is shown in the JAGMAN, appendix A-1-g.

Arrest in Quarters

This punishment is imposable only on officers. It is a moral restraint, as opposed to a physical restraint. It is similar to restriction, but has much narrower limits. The limits of arrest are set by the officer imposing the punishment and may extend beyond quarters. The term quarters includes military and private residences. The officer may be required to perform his or her regular duties as long as they do not involve the exercise of authority over subordinates.

Restriction

Restriction is the least severe form of deprivation of liberty. Restriction involves moral rather than physical restraint. The severity of this type of restraint depends on its duration and the geographical limits specified when the punishment is imposed. A person undergoing restriction may be required to report to a designated place at specified times if reasonably necessary to make sure the punishment is being properly executed.

Restriction ashore means that an accused will be restricted to the limits of the command except, of course, at larger shore stations where the use of recreational facilities might be further restricted. Restriction and arrest in quarters are normally imposed by a written order detailing the limits thereof and usually requires the accused to log in at certain specified times during the restraint. Article 1103 of *U.S. Navy Regulations, 1990*, provides that an officer placed in the status of arrest or restriction will not be confined to his or her room unless the safety or the discipline of the ship requires such action.

Forfeiture

Forfeiture means a permanent loss of entitlement to the pay forfeited. A forfeiture applies to basic pay and to sea or foreign duty pay, but not to incentive pay or allowances for subsistence or quarters. The amount of forfeiture of pay is expressed in whole dollar amounts, not in fractions, and shows the number of months affected. An example of a properly stated forfeiture is to forfeit \$50 pay per month for 2 months.

If the punishment includes both reduction, whether or not suspended, and forfeiture of pay, the forfeiture must be based on the grade the accused is reduced to. Forfeitures are effective on the date imposed unless suspended or deferred. Where a previous forfeiture is being executed, that forfeiture will be completed before any newly imposed forfeiture will be executed.

Extra Duty

Extra duties involve the performance of duties in addition to those normally assigned to the person undergoing the punishment. Various types of duties may be assigned, including fatigue duties. The MCM prohibits extra duties that are a known safety or health hazard, those that are cruel and unusual, or those that are not sanctioned by the customs of the service involved.

When extra duties are imposed upon a petty or noncommissioned officer, the duties cannot be demeaning to his or her rank or position. The immediate CO of the accused normally designates the amount and character of extra duty. Such duties normally should not extend beyond 2 hours per day. Guard duty may not be assigned as extra duty. Extra duty is not performed on Sunday although Sundays count as if such duty was performed.

Reduction in Grade

Reduction in paygrade is limited to one grade only for members in paygrades E-1 through E-6. E-7 through E-9 personnel cannot be reduced in grade at NJP. The grade from which reduced must be within the promotional authority of the CO imposing the reduction. See also the NAVMILPERSMAN, Article 3420140.2, for additional information on reduction.

Correctional Custody

Correctional custody is a form of physical restraint of a person during either duty or nonduty hours, or both, and may include hard labor, extra duties, or fatigue duties. Awardees may perform military duty but not watches and cannot bear arms or exercise authority over subordinates. Specific regulations for administering correctional custody can be found in *Instructions for Administering Correctional Custody*, OPNAVINST 1640.7C.

Time spent in correctional custody is not lost time. Correctional custody cannot be imposed on paygrades E-4 and above. To assist commanders in imposing correctional custody, correctional custody units (CCUs) have been established at major shore installations. Check the local operating procedures for the nearest CCU before correctional custody is imposed.

Confinement on Bread and Water or Diminished Rations

These punishments can only be awarded to E-3s and below if they are attached to or embarked in a vessel. These punishments involve physical confinement and are equivalent to solitary confinement because contact is allowed only with authorized personnel.

A medical officer must first certify in writing that the accused will suffer no serious injury and that the place of confinement will not harm the accused. Diminished rations is a restricted diet of 2,100 calories per day,

and instructions for its use are detailed in SECNAV-INST 1640.9.

EXECUTION OF PUNISHMENTS

All punishments, if not suspended, take effect when imposed. This means that the punishment in most cases will take effect when the CO informs the accused of his or her punishment decision. Thus, if the CO wishes to impose a prospective punishment, one to take effect at a future time, he or she should simply delay the impositions of NJP altogether. There are, however, several specific rules that authorize the deferral or stay of a punishment already imposed.

Deferral of Correctional Custody or Confinement on Bread and Water or Diminished Rations

The JAGMAN, section 0113b(3), permits a CO or an OIC to defer correctional custody, confinement on bread and water, or confinement on diminished rations for up to 15 days when adequate facilities are not available, the exigencies of the service so require, or the accused is not physically fit for the service of the punishments.

Deferral of Restraint Punishments Pending Appeal From NJP

A service member who has appealed NJP may be required to undergo any punishment imposed while the appeal is pending. However, if action is not taken on the appeal within 5 days after the appeal was submitted, and if the service member so requests, any unexecuted punishment involving restraint or extra duties is stayed until action on the appeal is taken.

Interruptions of Restraint Punishment by Subsequent NJP

The execution of any NJP involving restraint will normally be interrupted by a later NJP where restraint is awarded. Thereafter, the unexecuted portion of the prior restraint punishment will be executed. The officer imposing the later punishment, however, may order that the prior punishment be completed before the service of the later punishment.

Interruption of Punishment by Unauthorized Absence

Service of all NJP is interrupted during any period that the service member is unauthorized absence (UA). A punishment of reduction maybe executed even when the accused is UA.

COMBINATION OF PUNISHMENTS

Part V, par. 5d, MCM, 1984, provides that all authorized NJPs maybe imposed in a single case subject to the following limitations:

- Arrest in quarters may not be imposed in combination with restriction.
- Confinement on bread and water or diminished rations may not be imposed in combination with correctional custody, extra duties, or restriction.
- Correctional custody may not be imposed in combination with restriction or extra duties.
- Restriction and extra duties may be combined to run concurrently, but the combination may not exceed the maximum imposable for extra duties.

Here are a few examples of acceptable combinations of punishments:

1. If an O-4 CO wishes to impose the maximum amount of all permissible NJP upon an E-3, the maximum that could be imposed would be a:

- a. punitive letter of reprimand or admonition (or an oral reprimand or admonition);
- b. reduction to E-2;
- c. forfeiture of one-half pay per month for 2 months (based upon the reduced rate); and
- d. 45 days' restriction and extra duties to be served concurrently.

2. If an O-3 CO (or any OIC, regardless of grade) wishes to impose the maximum amount of all permissible NJP upon an E-3, the maximum that could be imposed would be a:

- a. punitive letter of reprimand or admonition (or an oral reprimand or admonition);
- b. reduction to E-2;
- c. forfeiture of 7 days' pay (based upon the reduced rate); and
- d. 14 days' restriction and extra duties to be served concurrently.

CLEMENCY AND CORRECTIVE ACTION ON REVIEW

Clemency action is a reduction in the severity of punishment that is done at the discretion of the officer authorized to take such action for reasons thought sufficient to him or her. Remedial corrective action is a reduction in the severity of punishment or other action taken by proper authority to correct some defect in the NJP proceeding and to offset the adverse impact of the error on the accused's right.

AUTHORITY TO ACT

Part V, par. 6a, MCM, 1984, and the JAGMAN, section 0118, state that after the imposition of NJP the following officials have authority to take clemency action or remedial corrective action:

- The officer who initially imposed the NJP (this authority is inherent in the office, not the person holding the office)
- The successor in command to the officer who imposed the punishment
- The superior authority to whom an appeal from the punishment would be sent, whether or not such an appeal has been made
- The CO or OIC of a unit, activity, or command that the accused is properly transferred to after the imposition of punishment by the first commander
- The successor in command of the latter

FORMS OF ACTION

The types of action that can be taken either as clemency or corrective action consist of setting aside, remission, mitigation, and suspension.

Setting Aside

This power has the effect of voiding the punishment and restoring the rights, privileges, and property lost to the accused by virtue of the punishment imposed. This action should be reserved for compelling circumstances where the commander feels a clear injustice has occurred. This normally means that the commander believes the punishment of the accused was clearly a mistake.

If the punishment has been executed, executive action to set it aside should be taken within a reasonable time—normally within 4 months of its execution. The CO who wishes to reinstate an individual reduced in rate at NJP is not bound by the provisions of the

SAMPLE LETTER OF NOTIFICATION

From: (command setting aside punishment)
To: Chief of Naval Personnel (PERS-82 or 83, as appropriate)
Subj: SET ASIDE OF NJP ICO (GRADE, RATE, NAME, AND SSN)
Ref: (a) UCMJ

1. I hereby set aside the nonjudicial punishment (NJP) in the case of (grade, rate, and name). All rights, privileges, and property affected by virtue of the execution of this punishment will be restored. Per authority of Article 15(d) of reference (a), request that you remove all reference to the NJP contained in (grade, rate, and names) official record. Request that copy-to addressees take appropriate restorative action in the case of (grade, rate, and name) and notify me and the member concerned when completed.

2. The following identifying information is provided:

- a. Name: (grade, rate, name, and SSN)
- b. Date of NJP: (date)
- c. Imposing Command: (indicate using guideline below)

(If different from the command setting aside, indicate by Standard Navy Distribution List (SNDL) long title and send a copy of the letter of notification to that command.)

(If imposing command is also the command that is setting aside the NJP, indicate by stating "This Command.")

- d. Reason: (indicate)

3. This letter will not be filed in (grade, rate, and name) official record, but will be destroyed after your action is completed.

Signature of Commanding Officer
(No "By direction")

Copy to:
(command that imposed punishment)
(cognizant personnel office)
(cognizant disbursing office if pay affected)
(member concerned)

Figure 5-9.-Sample letter of notification.

MILPERSMAN, Article 2230200, limiting advancement to a rate formerly held only after a minimum of 12 months' observation of performance. Such action can be taken with respect to the whole or a part of the punishment imposed. All entries on the punishment set aside are removed from the service record of the accused. Refer to the MILPERSMAN, Article 5030500.

According to the MILPERSMAN, Article 5040110, once a punishment is set aside, the CO prepares and personally signs (no By direction signature is allowed) a letter of notification as shown in figure 5-9. This letter is sent to the Chief of Naval Personnel (PERS-82 for officers and PERS-83 for enlisted) to

make sure all local records are purged of any notation of the NJP and its residual effects. PERS-82 or 83, as appropriate, identifies the documents to carry out the actions authorized by the CO and directs PERS-313D to remove all references to the matter from the microfiche record. PERS-82 or 83 will notify the CO and the member when the action has been completed.

Remission

This action also relates to the unexecuted portions of the punishment; that is, those parts that have not been completed. This action relieves the accused from having to complete his or her punishment, even though he or she has partially completed it. Rights, privileges, and

property lost by virtue of executed portions of punishment are not restored, nor is the punishment voided as in the case when it is set aside. The expiration of the current enlistment or term of service of the service member automatically remits any unexecuted punishment imposed under Article 15.

Mitigation

This action also relates to the unexecuted portions of the punishment. Mitigation of punishment is a reduction in the quantity or quality of the punishment imposed. In no event may the punishment imposed be increased to be more severe.

QUALITY.— Without increasing quantity, the following reductions by mitigation may be taken:

- Arrest in quarters to restriction
- Confinement on bread and water or diminished rations to correctional custody
- Correctional custody or confinement on bread and water or diminished rations to extra duties or restriction or both (to run concurrently)
- Extra duties to restriction

QUANTITY.— The length of deprivation of liberty or the amount of forfeiture or other money punishment also can be reduced and mitigated without any change in the quality (type) of punishment.

REDUCTION IN GRADE.— Reduction in grade, though executed, may be mitigated to forfeiture of pay. The amount of forfeiture can be no greater than that which could have been imposed by the mitigating commander had he or she initially imposed punishment. This type of mitigation may be done only within 4 months after the date of execution.

As an example, in mitigating NJP, neither the quantity nor the quality of the punishment may be increased. Therefore, it would be impermissible to mitigate 3 days' confinement on bread and water to 4 days' restriction because this would increase the quantity of the punishment. It would also be impermissible to mitigate 60 days' restriction to 1 day of confinement on bread and water because this would increase the quality of the punishment.

Suspension

This is an action to withhold the execution of the imposed punishment for a stated period pending good behavior on the part of the accused. Only later misconduct during the probationary period will cause the sus-

pension to be vacated (revoked) and this misconduct must be an offense under the UCMJ. This action may be taken with respect to unexecuted portions of the punishment or, in the case of a reduction in rank or a forfeiture, such action may be taken even though the punishment has been executed, subject to the following rules:

- An executed punishment of reduction or forfeiture may be suspended only within 4 months after the date of its execution.

- At the end of the probationary period, the suspended portions of the punishment are remitted automatically unless sooner vacated.

- There is no known authority for the imposition of conditions of probation that could not ordinarily be made the subject of a lawful order.

- Vacation of the suspended punishment may be effected by any CO or OIC over the person punished who has the authority to impose the kind and amount of punishment to be vacated.

- a. Vacation of the suspended punishment may only be based upon an offense under the UCMJ committed during the probationary period.

- b. Before a suspension may be vacated, the service member should be told that vacation is being considered and informed of the reasons for the contemplated action and his or her right to respond. A formal hearing is not required unless the punishment suspended is of the kind stated in Article 15(e)(1)-(7), UCMJ, in which case the accused should, unless impractical, be given an opportunity to appear before the officer contemplating vacation to submit any matters in defense, extenuation, or mitigation of the offense on which the vacation action is to be based.

- c. Vacation of a suspension is not punishment for the misconduct that triggers the vacation. Accordingly, misconduct may be punished and also serve as the reason for vacating a previously suspended punishment imposed at mast. Vacation proceedings are often handled at NJP. First, the suspended punishment is vacated; then the CO can impose NJP for the new offense. If NJP is imposed for the new offense, the accused must be afforded all of his or her hearing rights.

- d. The order vacating a suspension must be issued within 10 working days of the start of the vacation proceedings and the decision to vacate the suspended punishment is not appealable as an NJP appeal.

ACCUSED'S ACKNOWLEDGEMENT OF APPEAL RIGHTS

I, _____, SSN _____.
(Name and grade of accused)

assigned or attached to _____,
have been informed of the following facts concerning my rights of appeal as a result of captain's mast held on _____.

a. I have the right to appeal to (specify to whom the appeal should be addressed).

b. My appeal must be submitted within a reasonable time. Five days after the punishment is imposed is normally considered a reasonable time, in the absence of unusual circumstances. Any appeal submitted thereafter may be rejected as not timely. If there are unusual circumstances that I believe will make it extremely difficult or not practical to submit an appeal within the 5-day period, I should immediately advise the officer imposing punishment of such circumstances and request an appropriate extension of time in which to file my appeal.

c. The appeal must be in writing.

d. There are only two grounds for appeal; that is:

(1) The punishment was unjust, or

(2) The punishment was disproportionate to the offense(s) for which it was imposed.

e. If the punishment imposed included reduction from the paygrade of E-4 or above, or was in excess of: arrest in quarters for 7 days, correctional custody for 7 days, forfeiture of 7 days' pay, extra duties for 14 days, restriction for 14 days, or detention of 14 days' pay, then the appeal must be referred to a military lawyer for consideration and advice before action is taken on my appeal.

(Signature of Accused/Date)

(Signature of Witness/Date)

Figure 5-10.—Accused's acknowledgment of appeal rights.

e. The probationary period cannot exceed 6 months from the date of suspension and ends automatically upon expiration of the current enlistment. The running of the period of suspension is interrupted, however, by the unauthorized absence of the accused or the beginning of any proceeding to vacate the suspended punishment. The running of the period of probation resumes when the unauthorized absence ends or when the suspension proceedings are terminated without vacation of the suspended punishment.

APPEAL FROM NJP

A member who is awarded NJP and who believes the punishment unjust or disproportionate to the offense has the right to appeal the award to higher authority.

PROCEDURE

If punishment is imposed at NJP, the CO is required to make sure the accused is fully advised of his or her

right to appeal. Refer to part V, par. 4c(4)(B)(iii), MCM, 1984, and the JAGMAN, section 0110c. Figure 5-10 is an accused's acknowledgment of appeal rights that should be signed by the accused and witnessed to prove that the accused was informed of his or her appeal rights. File this form along with all the other papers in the accused's case file in the UPB.

A person punished under Article 15 may appeal the imposition of such punishment through proper channels to the appropriate appeal authority. If, however, the offender is transferred to a new command before filing his or her appeal, the immediate CO of the offender at the time the appeal is filed should send the appeal directly to the officer who imposed the punishment.

When the officer who imposed the punishment is in the Navy chain of command, the appeal will normally be sent to the area coordinator authorized to convene general courts-martial. A GCM authority superior to the officer imposing punishment may, however, set up an alternate route for appeals.

When the area coordinator is not superior in rank or command to the officer imposing punishment, or when the area coordinator is the officer imposing punishment, the appeal will be sent to the GCM authority next superior in the chain of command to the officer who imposed the punishment. An immediate or delegated area coordinator who has authority to convene GCMs may take action instead of an area coordinator if he or she is superior in rank or command to the officer who imposed the punishment.

For mobile units, the area coordinator for the previous purposes is the area coordinator most accessible to the unit at the time of sending the appeal.

When the officer who imposed the punishment is in the chain of command of the Commandant of the Marine Corps, the appeal will be made to the officer next superior in the chain of command to the officer who imposed the punishment.

When the officer who imposed the punishment has been designated a CO for naval personnel of a multi-service command, the appeal will be made according to the JAGMAN.

A flag or general officer in command may, with the express prior approval of the Chief of Naval Personnel or the Commandant of the Marine Corps, delegate authority to act on appeals to a principal assistant. An officer who has delegated his or her NJP power to a principal assistant may not act on an appeal from punishment imposed by that assistant.

TIME

Appeals must be submitted in writing within 5 days of the imposition of NJP or the right to appeal is waived in the absence of good cause shown. The appeal period runs from the date the accused is informed of his or her appeal rights. Normally, this is the day NJP is imposed. With an appeal submitted more than 5 days after the imposition of NJP (less any mailing delays), the officer acting on the appeal determines whether good cause was shown for the delay in the appeal.

Extension of Time

If it appears to the accused that good cause may exist that would make it impossible or extremely difficult to prepare and submit the appeal within the 5-day period, the accused should immediately advise the officer who imposed the punishment of the problems and request an extension of time. The officer imposing NJP determines whether good cause was shown and advises the accused whether an extension of time is permitted.

Request for Stay of Restraint Punishments or Extra Duty

A service member who has appealed may be required to undergo any restraint punishment or extra duties imposed while the appeal is pending. If action is not taken on the appeal by the appeal authority within 5 days after the written appeal has been submitted and if the accused has so requested, any unexecuted punishment involving restraint or extra duties will be stayed until action on the appeal is taken. The accused should include in his or her written appeal a request for stay of restraint punishment or extra duties; however, a written request for a stay is not specifically required.

CONTENTS OF APPEAL PACKAGE

The appeal package will consist of the appellant's basic letter of appeal, the endorsement by the CO who imposed the NJP, and the supervisory authority's response to the appeal.

Appellant's Letter (Grounds for Appeal)

The letter of appeal from the accused should be addressed to the appropriate appeal authority via the commander who imposed the punishment and other appropriate COs in the chain of command. The letter should set forth the obvious features of the NJP (date, offense, who imposed it, and punishment imposed) and detail the specific grounds for relief.

There are only two grounds for appeal—the punishment was unjust or the punishment was disproportionate to the offense committed. The grounds for appeal are broad enough to cover all reasons for appeal.

Unjust punishment exists when the evidence is not enough to prove the accused committed the offense; when the statute of limitations prohibits lawful punishment; or when any other fact, including a denial of substantial rights, calls in question the validity of the punishment.

Punishment is disproportionate if it is, in the judgment of the reviewer, too severe for the offense committed. An offender who believes that his or her punishment is too severe, appeals on the ground of disproportionate punishment, whether or not his or her letter artfully states the ground in precise terminology. A punishment may be legal but excessive or unfair considering circumstances such as (1) the nature of the offense, (2) the absence of aggravating circumstances, (3) the prior record of the offender, and (4) any other circumstances in extenuation and mitigation.

The grounds for appeal need not be stated artfully in the accused's appeal letter, and the reviewer may have

SAMPLE NJP APPEAL

5800

11 Feb CY

From: DPSA Jane A. Doe, USN, 333-33-3333
To: Commander Fleet Air Mediterranean
Via: Commanding Officer, U.S. Naval Support Activity, Naples, Italy

Subj: APPEAL FROM NONJUDICIAL PUNISHMENT

Ref: (a) Art. 15(c), UCMJ
(b) Part V, par. 7, MCM, 1984
(c) JAGMAN 0116

Encl: (1) (Statements of other persons of facts or matters in mitigation that support the appeal)
(2) " " " " "
(3) " " " " "

1. As provided by references (a) through (c), appeal is herewith submitted from nonjudicial punishment imposed upon me on 10 February 19CY by Captain Jon T. Boate, Commanding Officer, U.S. Naval Support Activity, Naples, Italy, as follows:

a. Offense(s)

Charge: Violation of Article 134, UCMJ

Specification: In that DPSA Jane A. Doe, USN, was, on board U.S. Naval Support Activity, Naples, Italy, on or about 29 January 19CY, drunk and disorderly.

b. Punishment: Forfeiture of \$250.00 pay per month for 2 months

c. Grounds of Appeal

Punishment for the Charge is unjust because I was not really that drunk and unfortunately just lost my balance dancing and fell into the plate glass window.

JANE A. DOE

Figure 5-11.-Sample NJP appeal.

to deduce the appropriate ground implied in the letter. Unartful craftsmanship or draftsmanship or improper addressees or other administrative irregularities are not grounds for refusing to send the appeal to the reviewing authority. If you note any administrative mistakes, if material, correct them in the endorsement that sends the appeal. Thus, if an accused does not address his or her letter to all appropriate commanders in the chain of command, just readdress and send the appeal to the proper authority. Do not send the appeal back to the accused for redrafting since the appeal should be sent promptly to the reviewing authority.

The appellant's letter begins the review process and is a quasi-legal document. It should be temperate and state the facts and opinions the accused believes entitles

him or her to relief. The offender should avoid unfounded allegations on the character or personality of the officer imposing punishment. See Article 1108, *U.S. Navy Regulations, 1990*. The accused, however, should state the reasons for his or her appeal as clearly as possible. Supporting documentation in the form of statements of other persons or personnel records may be submitted if the accused desires. In no case is the failure of the accused to do these things a lawful reason for refusing to process the appeal. Finally, should the accused desire that his or her restraint punishment or extra duties be stayed pending the appeal, he or she should specifically request this in the letter. Refer to figure 5-11 for a sample of an accused's letter of appeal.

SAMPLE FIRST ENDORSEMENT TO NJP APPEAL

5800
Ser
13 Feb CY

FIRST ENDORSEMENT on DPSA Jane A. Doe's ltr of 11 Feb CY

From: Commanding Officer, U.S. Naval Support Activity, Naples, Italy
To: Commander Fleet Air Mediterranean

Subj: APPEAL FROM PUNISHMENT ICO DPSA JANE A. DOE, USN, 333-33-3333

Encl: (4) NAVPERS 1626/7 with attachments thereto
(5) DPSA Doe's record of performance (page 9)

1. Forwarded for action. Enclosures (4) and (5) are attached in amplification of the appeal.
2. (Statement of facts or circumstances or other matter that is not contained in appellant's letter of appeal and that would aid the command acting on appeal in arriving at a proper determination. This should not be argumentative nor in the form of a "defense" to the matters stated in appellant's letter of appeal.)

JON T. BOATE

Future 5-12. Sample first endorsement to NJP appeal.

Contents of the Forwarding Endorsements

All via addressees should use a simple forwarding endorsement and should not comment on the validity of the appeal. The exception to this rule is the endorsement of the officer who imposed the punishment. The JAG-MAN requires that this endorsement, shown in figure 5-12, include the following information:

- A comment on any assertions of fact contained in the letter of appeal that the officer who imposed the punishment considers inaccurate or erroneous.

Recitation of any facts on the offenses that are not otherwise included in the appeal papers. If such factual information was brought out at the mast, the endorsement should so state and include any comment made by the appellant at the mast. Any other adverse factual information stated in the endorsement, unless it recites matters already stated in official service record entries, should be referred to the appellant for comment, if possible, and the appellant should be given an opportunity to submit a statement about it or state that he or she does not wish to make any statement.

- As an enclosure, a copy of the completed mast report form (NAVPERS 1626/7).

- As enclosures, copies of all documents and signed statements that were considered as evidence at

the mast or, if the NJP was imposed on the basis of the record of a court of inquiry or other fact-finding body, a copy of that record, including the findings of fact, opinions, and recommendations, together with copies of any endorsements thereon.

- As enclosures, copies of the appellant's record of performance as set forth on service record page 9, administrative remarks set forth on page 13, and disciplinary records set forth on page 7.

The officer who imposed the punishment should not, by endorsement, seek to defend against the allegations of the appeal but should, where appropriate, explain the rationalization of the evidence. For example, the officer may have chosen to believe one witness' account of the facts while disbelieving another witness' recollection of the same facts and this should be included in the endorsement. This officer may properly include any facts relevant to the case as an aid to the reviewing authority but should avoid irrelevant character assassination of the accused. Finally, any errors made in the decision to impose NJP or in the amount of punishment imposed should be corrected by this officer and the corrective action noted in the forwarding endorsement. Even though corrective action is taken, the appeal must still be sent to the reviewer.

SAMPLE ACTION BY SUPERVISORY AUTHORITY ON NJP APPEAL

5800
Ser
14 Feb CY

From: Commander Fleet Air Mediterranean
To: DPSA Jane A. Doe, USN, 333-33-3333
Via: Commanding Officer, U.S. Naval Support Activity, Naples, Italy

Subj: APPEAL FROM NONJUDICIAL PUNISHMENT ICO DPSA JANE A. DOE

- SECTION A
1. Returned, appeal (granted) (denied).
 2. Your appeal has been referred to a lawyer for consideration and advice before my action.
 3. (Statement of reasons for action on appeal and remarks of admonition and exhortation, if desired.)
 4. You are directed to return this appeal and accompanying papers to your immediate commanding officer for filing with the record of your case.

HEADY HONCHO

FIRST ENDORSEMENT on Commander Fleet Air Mediterranean ltr 5800
Ser of 14 Feb CY

From: Commanding Officer, U.S. Naval Support Activity, Naples, Italy
To: DPSA Jane A. Doe, USN, 333-33-3333

Subj: APPEAL FROM PUNISHMENT ICO DPSA JANE A. DOE

- SECTION B
1. Returned for delivery.
 2. You are directed to return this appeal and accompanying papers to the legal officer for filing with the record in your case.

JON T. BOATE

SECOND ENDORSEMENT on Commander Fleet Air Mediterranean ltr 5800
Ser of 14 Feb CY

From: DPSA Jane A. Doe, USN, 333-33-3333
To: Commanding Officer, U.S. Naval Support Activity, Naples, Italy

Subj: APPEAL FROM NONJUDICIAL PUNISHMENT

- SECTION C
1. I acknowledge receipt and have noted the contents of the letter on my appeal from nonjudicial punishment.
 2. The appeal and all attached papers are returned for filing with the record of my case.

JANE A. DOE

Figure 5-13.-Sample action by supervisory authority on NJP appeal.

Endorsement of the Reviewing Authority

There are no particular legal requirements on the content of the reviewer's endorsement except to inform the offender of his or her decision. Figure 5-13, section

A, shows a sample response by a supervisory authority on an NJP appeal. A legally sound endorsement will include the reviewer's specific decision on each ground of appeal, the basic reasons for the decision, a statement that a lawyer has reviewed the appeal, if such review is

required, and instructions for the disposition of the appeal package after the offender receives it. The endorsement should be addressed to the accused via the appropriate chain of command. Where persons not in the direct chain of command (such as finance officers) are directed to take some corrective action, copies of the reviewer's endorsement should be sent to them. Words of exhortation or admonition, if temperate in tone, are suitable for inclusion in the return endorsement of the reviewer.

Via Addressee's Return Endorsement

If any via addressee has been directed by the reviewer to take corrective action, the accomplishment of that action should be noted in that commander's endorsement. This endorsement should reiterate the steps the reviewer directed the accused to follow in disposing of the appeal package. These instructions should always be to return the appeal to the appropriate commander for filing with the record of his or her case. See figure 5-13, section B, for an example of this endorsement.

Accused's Endorsement

The last endorsement should be from the accused to the CO holding the records of the NJP. See figure 5-13, section C. The endorsement will acknowledge receipt of the appeal decision and send the package back for filing.

POSTMAST ACTIVITY

The LN may have duties in several distinct areas at the completion of NJP. The LN must make sure all necessary entries are made in the service record of the member being punished and must provide reports for entries in the POD and the ship or station logbook. Finally, the LN maintains the UPB.

EXECUTION OF NJP

When punishment is imposed as a result of CO's mast, that punishment must be recorded in the accused's service record. Additionally, depending on the type of punishment imposed, certain forms and/or letters must be prepared in conjunction with standard service record entries. The following discussion is provided to help you better understand the procedures for preparing these forms and letters used in conjunction with enlisted service record entries.

Confinement Order

When a member is awarded punishment that includes confinement on bread and water or confinement on diminished rations, a Confinement Order, NAVPERS 1640/4, must be prepared indicating the offense(s) committed, the time and date the confinement was directed, by whom and when the accused was given a medical examination, and who authorized the confinement. A sample of a completed confinement order is shown in figure 5-14.

TEMADD Orders for Correctional Custody

TEMADD orders must be prepared transferring the accused to the correctional custody facility under the provisions of the *Manual for the Administration of Correctional Custody*, OPNAVINST 1640.7C. There are other administrative matters that must be completed when transferring an accused to a correctional custody Facility and the specific requirements can be found in OPNAVINST 1640.7C and in SECNAVINST 1640.7. Both instructions outline the requirements for placing a person into correctional custody and procedures for administering the same.

Letter of Censure

As previously discussed in this lesson, a CO may award as punishment an admonition or a reprimand to the accused. These can be either oral or written in the case of enlisted personnel, and in writing only in cases of commissioned and warrant officers. If the admonition or reprimand is to be written, the format shown in the JAGMAN should be used. When either of these types of letter of censure is prepared, careful attention to the requirements outlined in the JAGMAN should be followed. When the admonition or reprimand is given orally, as in the case of enlisted personnel, the proper notation must be made on the NAVPERS 1626/7 and recorded in the Punishment Awarded section of the service record page being used to record the results of CO's mast.

NJP of Officers

Before we look at the procedures for making service record entries for enlisted personnel, a brief discussion of the procedures involved when an officer receives NJP as a result of CO's mast is needed.

Whenever NJP is imposed upon an officer, the authority imposing the punishment immediately notifies PERS-82 by letter as soon as the results are final;

| CONFINEMENT ORDER NAVPERS 1640/4 (REV. 2-78) S/N 0106-LF-016-4021 | | | | | | | | | | | | | | | | | | | | | |
|---|-------------|---|---------------------------|-------------------|-------------|---|--|----|--|--|----|--|--|------|--|--|-------|--|--|-------|--|
| NAME (Last, first, middle) Seaman, Able B. | | SSN 555-55-5555 | RATE/GRADE PCSA | | | | | | | | | | | | | | | | | | |
| SHIP OR ORGANIZATION USS John F. Kennedy | | DATE 01 August 19CY | | | | | | | | | | | | | | | | | | | |
| STATUS | | | | | | | | | | | | | | | | | | | | | |
| DETAINED (Alleged violation of UCMJ Articles) "I have been informed that I am being confined for the above alleged offense(s)" Date _____ Signature of accused _____ Date _____ Signature of witness _____ | | CONFINED AS RESULT OF <input type="checkbox"/> VACATED SUSPENSION <input checked="" type="checkbox"/> NJP <input type="checkbox"/> SCM <input type="checkbox"/> SPCM <input type="checkbox"/> GCM CHARGES AND SPECIFICATION CONVICTED OF Art. 86 - UA from 0800, 29 Jun CY until 1530, 30 Jul CY SENTENCE ADJUDGED 3 days bread & water FFP - \$350 x 2 mos IF SENTENCE DEFERRED, DATE DEFERMENT TERMINATED: 01 Aug 19CY <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 5px;"> <tr> <th style="width: 50%;">SENTENCE APPROVED</th> <th style="width: 25%;">APPROVED BY</th> <th style="width: 25%;">DATE</th> </tr> <tr> <td> </td> <td>CA</td> <td> </td> </tr> <tr> <td> </td> <td>SA</td> <td> </td> </tr> <tr> <td> </td> <td>NCMR</td> <td> </td> </tr> <tr> <td> </td> <td>USCMA</td> <td> </td> </tr> <tr> <td> </td> <td>OTHER</td> <td> </td> </tr> </table> | | SENTENCE APPROVED | APPROVED BY | DATE | | CA | | | SA | | | NCMR | | | USCMA | | | OTHER | |
| SENTENCE APPROVED | APPROVED BY | DATE | | | | | | | | | | | | | | | | | | | |
| | CA | | | | | | | | | | | | | | | | | | | | |
| | SA | | | | | | | | | | | | | | | | | | | | |
| | NCMR | | | | | | | | | | | | | | | | | | | | |
| | USCMA | | | | | | | | | | | | | | | | | | | | |
| | OTHER | | | | | | | | | | | | | | | | | | | | |
| PRE TRIAL CONFINEMENT NECESSARY - <input type="checkbox"/> BECAUSE OF THE SERIOUSNESS OF THE OFFENSE CHARGED <input type="checkbox"/> TO ENSURE THE PRESENCE OF THE ACCUSED AT THE TRIAL | | REMARKS SECTION FOR ARTICLE 86 OFFENSES ONLY: <input type="checkbox"/> SURRENDERED (VOLUNTARY RETURN) <input type="checkbox"/> APPREHENDED BY CIVIL/MILITARY AUTHORITIES | | | | | | | | | | | | | | | | | | | |
| CONFINEMENT DIRECTED AT <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="width: 30%;">HOUR</th> <th style="width: 70%;">DATE</th> </tr> <tr> <td style="text-align: center;">1320</td> <td style="text-align: center;">01 Aug CY</td> </tr> </table> | | HOUR | DATE | 1320 | 01 Aug CY | TYPED NAME/RANK/TITLE J. A. Doe, CAPT, USN, CO SIGNATURE _____ | | | | | | | | | | | | | | | |
| HOUR | DATE | | | | | | | | | | | | | | | | | | | | |
| 1320 | 01 Aug CY | | | | | | | | | | | | | | | | | | | | |
| MEDICAL CERTIFICATE | | | | | | | | | | | | | | | | | | | | | |
| The above named individual was examined by me at <u>1345</u> on <u>01 Aug CY</u> and found to be <div style="display: flex; justify-content: space-between; font-size: small;"> (HOUR) (DATE) </div> | | | | | | | | | | | | | | | | | | | | | |
| <input checked="" type="checkbox"/> fit <input type="checkbox"/> unfit for confinement The following irregularities were noted during the examination: (if none, so state) | | | | | | | | | | | | | | | | | | | | | |
| TYPED NAME/RANK/TITLE Jon T. Boate, LT, MC, USN | | SIGNATURE _____ | | | | | | | | | | | | | | | | | | | |
| RECEIPT FOR PRISONER | | | | | | | | | | | | | | | | | | | | | |
| The above named individual was received at <u>Ship's Brig, USS John F. Kennedy</u> <div style="text-align: center; font-size: small;">(NAME OF CORRECTIONAL CENTER)</div> | | | | | | | | | | | | | | | | | | | | | |
| at <u>1408</u> on <u>01 Aug CY</u> <div style="display: flex; justify-content: space-between; font-size: small;"> (HOUR) (DATE) </div> | | | | | | | | | | | | | | | | | | | | | |
| TYPED NAME/RANK/TITLE H. H. Hull, MACM, USN, Brig Officer | | SIGNATURE _____ | | | | | | | | | | | | | | | | | | | |

U.S. GOVERNMENT PRINTING OFFICE: 1981-703-100/7595 2-1

Figure 5-14. Confinement Order, NAVPERS 1640/4.

for example, when the officer declines to appeal, does not appeal within the required time, or after the appeal has been decided. If the officer imposing NJP is not a flag officer, the letter report must be submitted via the first flag officer in the administrative chain of command. These required reports are separate and distinct from any reported NJP that maybe contained in inves-

tigations or other correspondence. Refer to the MILPERSMAN for the format of the report.

ENLISTED SERVICE RECORD ENTRIES

Upon completion of NJP you will, in all probability, be responsible for making (or causing to be made) a

number of record entries to record the action taken at mast.

The manner in which service record entries must be made depends upon the nature of the offense and of the action taken by the CO. Since most service record entries must be prepared using optical character recognition (OCR) forms for inclusion into the Joint Uniform Military Pay System (JUMPS), you should become familiar with the use of OCR typewriters and procedures for preparing the OCR document. The OCR documents must follow exactly the procedures outlined in the *Disbursing, Administrative, and Personnel Manual* (DAPMAN), NAVSO P-3680.

Let us now look at the procedures for recording the actions of a CO taken as a result of CO's mast, including the procedures for preparing OCR documents.

No Punishment

If the CO decides that the alleged offender has not committed the offense and dismisses the charge(s) or if it is found that the alleged offender is guilty but a decision is made that punishment is inappropriate and the offense is excused, you will make no entry in the member's service record. There is one exception to this general rule.

Whenever the service record contains a UA entry, the MILPERSMAN requires you to make an entry on the service member's page 13 showing the period of UA and the final action taken by the CO. Additionally, the MILPERSMAN also requires that you prepare a page 13 entry when there is a UA of less than 24 hours, and the DAPMAN requires that a NAVPERS 1070/606 be prepared when there is a UA of more than 24 hours. If no punishment is awarded at CO's mast for the UA, you must prepare an explanatory entry on a page 13 for UA periods of less than 24 hours, and on a NAVPERS 1070/606 when the UA period is for more than 24 hours. If there is no UA involved, and no punishment is awarded as a result of CO's mast, then you will make no service record entries.

Reference to Court-Martial

When a CO refers a case to a court-martial from CO's mast, do not make any service record entry unless the case involves a UA of the service member. When a UA case is referred to a court-martial, the DAPMAN requires you to make entries on a NAVPERS 1070/606 showing the UA.

Punishment Imposed

Whenever NJP is imposed on enlisted members, a memorandum entry on page 9 is required by the MILPERSMAN. If the case is dismissed or excused, no service record entry on a page 9 is needed. An example of a page 9 entry is shown in figure 5-15.

PUNISHMENT AFFECTING PAY.— The cardinal principle here is that for every punishment that affects the member's pay, you must prepare a NAVPERS 1070/607. Punishments that affect pay are a reduction in rate and forfeiture of pay. An example of how to use the NAVPERS 1070/607 is shown in figure 5-16. See the DAPMAN for detailed instruction on its use along with numerous explanatory examples.

Before turning to specific UA examples, there is one general requirement—wherever the mast results in a reduction in rate, the MILPERSMAN requires a page 4 entry in addition to all other required entries.

UA, Less Than 24 Hours.— Because there is no lost time when a UA period is less than 24 hours, it is not necessary to prepare a NAVPERS 1070/606. You need only prepare a NAVPERS 1070/607 substantially as shown in figure 5-17. Because you will have a page 13 entry, it will, of course, be necessary to make another page 13 entry showing the end of UA. Do not put the NJP entry on a page 13 as it has been made on a NAVPERS 1070/607.

UA, More Than 24 Hours.— In this case, you will have prepared a NAVPERS 1070/606 on the second day of UA. After the CO decides that the absence was both (1) unauthorized absence and (2) not excused (both of which the CO must do before imposing any punishment that affects pay), you must complete blocks 38 through 42 of the NAVPERS 1070/606 as shown in figure 5-18. Do not record the punishment awarded in section 1. Instead, you will show the punishment awarded on a NAVPERS 1070/607 as shown in figure 5-19.

PUNISHMENT NOT AFFECTING PAY.— Again we must distinguish between offenses that involve lost time and those that do not. If the punishment does not affect the member's pay (a punishment other than reduction or forfeiture) and does not involve lost time, you need only make a page 13 entry as shown in figure 5-20. Other sample page 13 entries are given in the MILPERSMAN.

If lost time is involved, you will need to complete the NAVPERS 1070/606 that initially recorded the UA. Because the punishment does not affect pay, it is not necessary to prepare a NAVPERS 1070/607.

90

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|-------------------------|--|---------|--|-----------------|--|
| BUPERS USE ONLY | | P601-7R | | BUPERS USE ONLY | |
| COURT MEMORANDUM | | | | | |
| 38 | | | | | |

| | | | | | |
|---|---|--|---|---|--------------|
| 1. DATE SUBMITTED CYAPR17 | | 2. SHIP OR STATION AND LOCATION NAVAL BASE, NORFOLK, VA | | | |
| 3. DATE OF REFERRAL | 4. TYPE OF COURT NJP | 5. DATE OF COURT/MAST CYAPR17 | 6. UCMJ ARTICLE(S) 128 | | |
| 7. DATE OF ACTION | 8. TYPE OF ACTION <input checked="" type="checkbox"/> REPORT OF ACTION | 9. MODIFICATION OF ACTION <input type="checkbox"/> | 10. CORRECTION TO PREVIOUS 1070/607 <input type="checkbox"/> | 11. DATE OF SUBMISSION ON 1070/607 MOD OR CORRECTED | |
| <input checked="" type="checkbox"/> 12. RATE ADJUSTMENT | 13. FROM SK3 | 14. TO SKSN | 15. TIR CYAPR17 | | |
| <input checked="" type="checkbox"/> 16. FORFEITURE | 17. MONTHLY AMT. \$100.00 | 18. NO. MONTHS 2 | | | |
| <input type="checkbox"/> 19. FINE | 20. AMOUNT \$ | <input type="checkbox"/> 21. CONSENT TO CHECKAGE | <input type="checkbox"/> 22. DOES NOT CONSENT TO CHECKAGE | 23. MO. AMT. OF CHECKAGE \$ | 24. NO. MOS. |
| <input type="checkbox"/> 25. DETENTION | 26. MONTHLY AMT. \$ | 27. NO. MONTHS | 28. DETENTION RE-FUND DATE | | |
| 29. DESERTION MARK REMOVED <input type="checkbox"/> | <input type="checkbox"/> 30. ADJUDGED | <input type="checkbox"/> 31. ADJUDGED AND DIS-APPROVED | | | |
| PRE TRIAL CONFINEMENT 32. FROM | 33. TO | 34. DAYS LOST TIME (30 DAY BASIS) | 35. DAYS LOST TIME (DAY FOR DAY) | | |
| CONFINEMENT ORDERED AND COMPLETED 36. FROM | 37. TO | 38. DAYS LOST TIME (30 DAY BASIS) | 39. DAYS LOST TIME (DAY FOR DAY) | | |
| 40. CHANGE EAOS TO | 41. CHANGE EXP. ENL TO | | | | |

42. SYNOPSIS OF OFFENSE(S), DATE(S), AND SENTENCE ADJUDGED (ALSO AMPLIFYING REMARKS MAY BE CONTINUED ON REVERSE)

CYAPR17: CO'S NJP HELD THIS DATE
 VIOLATION UCMJ ART 128, ASSAULT ON SKSN JONES, USN, ON
 CYAPR08
 PUNISHMENT AWARDED: RIR TO SKSN, FOR OF \$100.00 PPM
 X 2, AND 10 DAYS' RESTRICTION TO
 THE LIMITS OF NAVAL BASE, NORFOLK, VA.

DATE IDENTIFICATION AND RESUME OF CONVENING, SUPERVISORY, OR OTHER AUTHORITY INCLUDING ACTION UNDER ARTICLES 65, 66, 67, 69, 72, 73, 74, OR 15 (D) OR (E) UCMJ (ALSO ANY APPEAL)

| | |
|------------------|--------------------|
| 43. 1070/607 DTD | 44. AUTHORITY TYPE |
|------------------|--------------------|

45.

(MAY BE CONTINUED ON REVERSE)

| | | |
|--|------------------------|-------------------------|
| 46. (SIGNATURE) BY DIRECTION MARY N. CHRISTMAS, PNC, USN, BY DIR OF THE OIC | | GRADE |
| 47. UNIT I.D. CODE 12345 | 48. RATE SKSN | |
| 49. NAME (LAST, FIRST, MIDDLE) HATCH, JOHN ADAM | 50. SSN 233-33-3333 | 51. BRANCH CLASS USN |

32154

COURT MEMORANDUM NAVPERS 1070/607 (REV. 12-75) S. N 0106-LF-010-6960

U. S. GOVERNMENT PRINTING OFFICE: 1986-1-491-5481-1-40037

FORWARD TO LOCAL DISBURSING OFFICE

Figure 5-16.—Preparation of Court Memorandum, NAVPERS 1070/607.

| | | | | | |
|-------------------------|--|---------|--|-----------------|--|
| BUPERS USE ONLY | | P601-7R | | BUPERS USE ONLY | |
| COURT MEMORANDUM | | | | | |
| 38 | | | | | |

| | | | | | |
|---|--|---|--|---|--|
| 1. DATE SUBMITTED CYJUN08 | | 2. SHIP OR STATION AND LOCATION USS DAHLGREN (DDG 43) | | | |
| 3. DATE OF REFERRAL | | 4. TYPE OF COURT NJP | | 5. DATE OF COURT/MAST CYJUN08 | |
| 6. UCMJ ARTICLE(S) 86 | | | | | |
| 7. DATE OF ACTION CYJUN08 | | 8. TYPE OF ACTION <input checked="" type="checkbox"/> REPORT OF ACTION | | 9. MODIFICATION OF ACTION <input type="checkbox"/> | |
| 10. CORRECTION TO PREVIOUS 1070/607 | | 11. DATE OF SUBMISSION ON 1070/607 MOD OR CORRECTED | | | |
| 12. RATE ADJUSTMENT <input type="checkbox"/> | | 13. FROM | | 14. TO | |
| 15. TIR | | | | | |
| 16. FORFEITURE <input checked="" type="checkbox"/> | | 17. MONTHLY AMT. \$ 50.00 | | 18. NO. MONTHS 2 | |
| 19. FINE <input type="checkbox"/> | | 20. AMOUNT \$ | | 21. CONSENT TO CHECKAGE <input type="checkbox"/> | |
| 22. DOES NOT CONSENT TO CHECKAGE <input type="checkbox"/> | | 23. MO. AMT. OF CHECKAGE \$ | | 24. NO. MOS. | |
| 25. DETENTION <input type="checkbox"/> | | 26. MONTHLY AMT. \$ | | 27. NO. MONTHS | |
| 28. DETENTION RE-FUND DATE | | | | | |
| 29. DESERTION MARK REMOVED <input type="checkbox"/> | | 30. ADJUDGED <input type="checkbox"/> | | 31. ADJUDGED AND DIS-APPROVED <input type="checkbox"/> | |
| 32. PRE-TRIAL CONFINEMENT FROM | | 33. TO | | 34. DAYS LOST TIME (30 DAY BASIS) | |
| 35. DAYS LOST TIME (DAY FOR DAY) | | | | | |
| 36. CONFINEMENT ORDERED AND COMPLETED FROM | | 37. TO | | 38. DAYS LOST TIME (30 DAY BASIS) | |
| 39. DAYS LOST TIME (DAY FOR DAY) | | | | | |
| 40. CHANGE EAOS TO | | 41. CHANGE EXP. ENL. TO | | | |
| 42. SYNOPSIS OF OFFENSE(S), DATE(S), AND SENTENCE ADJUDGED (ALSO AMPLIFYING REMARKS, MAY BE CONTINUED ON REVERSE) | | | | | |

CYJUN08: COMMANDING OFFICER'S NONJUDICIAL PUNISHMENT
 OFFENSE: VIOL UCMJ ART. 86. UA FROM 0730, CYJUN02 TO 0600, CYJUN03.
 NONJUDICIAL PUNISHMENT AWARDED: FORFEITURE OF \$50.00 PAY PER MONTH FOR TWO (2) MONTHS AND 15 DAYS' EXTRA DUTY.

DATE IDENTIFICATION AND RESUME OF CONVENING, SUPERVISORY, OR OTHER AUTHORITY INCLUDING ACTION UNDER ARTICLES 65, 66, 67, 69, 72, 73, 74, OR 15 (D) OR (E), UCMJ, (ALSO ANY APPEAL)

| | | | |
|-----------------|--|--------------------|--|
| 43. 1070/607DTD | | 44. AUTHORITY TYPE | |
| | | | |

45.

(MAY BE CONTINUED ON REVERSE)


| | | | |
|--|--|-------------------------|--|
| | | GRADE | |
| J. R. FROST, LNC, USN, BY DIR OF THE CO | | | |
| 47. UNIT I.D. CODE 12345 | | 48. RATE BTFA | |
| 49. NAME (LAST, FIRST, MIDDLE) DOE, JOHN ADAM | | 50. SSN 123-45-6789 | |
| | | 51. BRANCH/CLASS USN | |

32152

COURT MEMORANDUM NAVPERS 1070/607 (REV 12-75) S-N 0106-LF-010-6960
 ☆ U.S. GOVERNMENT PRINTING OFFICE 1986-491-648 T 40037

FORWARD TO LOCAL DISBURSING OFFICE

Figure 5-17.—Preparation of Court Memorandum, NAVPERS 1070/607, reflecting NJP punishment for a UA period of less than 24 hours.

| | | | | | | |
|---|---|---|---|--|--|------------------------------------|
| BUPERS USE ONLY | | P601-6R | | BUPERS USE ONLY | | 38 |
| RECORD OF UNAUTHORIZED ABSENCE | | | | | | |
| A | 1. DATE OF SUBMISSION CYJUN08 | | 2. SHIP OR STATION AND LOCATION USS DAHLGREN (DDG 43) | | | |
| B | UNAUTHORIZED ABSENCE FROM: 3. HOUR: 0730 4. DATE: CYMAY11 | | LIBERTY BEGAN 5. OVER LIBERTY <input checked="" type="checkbox"/> 6. HOUR: 1700 7. DATE: CYMAY10 | | 8. OVER LEAVE <input type="checkbox"/> 9. AWOL <input type="checkbox"/> | |
| C | HELD AND CHARGED BY CIVIL AUTH. 10. HOUR: 11. DATE: | | 12. DELIVERED TO CIVIL AUTH <input type="checkbox"/> | | 13. APPREHENDED BY CIVIL AUTHORITIES <input type="checkbox"/> 14. DD 616 ISSUED <input type="checkbox"/> | |
| 15. AT (ORGANIZATION AND LOCATION) | | | | | | |
| D | UNAUTHORIZED ABSENCE FOR 10 DAYS <input checked="" type="checkbox"/> 16. DD 553 ISSUED | | <input checked="" type="checkbox"/> 17. PERSONAL EFFECTS COLLECTED, INVENTORIED, AND IN SAFEKEEPING | | | |
| E | 18. UIC MEMBER UA FROM: 12345 | | 19. ACTIVITY MEMBER UA FROM: USS DAHLGREN (DDG 43) | | | |
| F | RETURNED TO MILITARY JURISDICTION 20. HOUR: 1910 21. DATE: CYJUN07 | | <input type="checkbox"/> 22. APPREHENDED | | <input checked="" type="checkbox"/> 23. SURRENDERED <input type="checkbox"/> 24. DD 616 ISSUED | |
| 25. RETURNED TO MILITARY JURISDICTION AT: (ACTIVITY) USS DAHLGREN (DDG 43) | | 26. UIC 12345 | | <input checked="" type="checkbox"/> 27. RET. ON BOARD | | |
| 28. TRANSFERRED TO: (ACTIVITY) | | 29. UIC | | | | |
| G | <input type="checkbox"/> 30. DETERMINATION NOT UNAUTHORIZED ABSENCE | | 31. NAVPERS 1070/606 WHICH REPORTED ABSENCE IN ERROR | | | |
| <input type="checkbox"/> 32. ABSENCE EXCUSED UNAVOIDABLE | | 33. CHARGED NO. DAYS LEAVE (DAY FOR DAY) | | | | |
| SKMC 34. FROM: | | 35. TO: | | 36. DISEASE DUE TO USE OF ALCOHOL/DRUGS <input type="checkbox"/> | | 37. OTHER <input type="checkbox"/> |
| <input checked="" type="checkbox"/> 38. ABSENCE NOT EXCUSED | 39. CHARGE NO. DAYS LOST TIME (30 DAY MO) | 40. CHARGE NO. DAYS LOST TIME (DAY FOR DAY) | 41. CHANGE EAOS TO: CY+1NOV16 | | 42. CHANGE EXPR ENL TO: CY+1NOV16 | |
| <input type="checkbox"/> 43. ADJUST PREVIOUSLY SUBMITTED 1070/606 | | 44. DATED | | <input type="checkbox"/> 45. CORRECTED INFO ENTERED ABOVE | | |
| 46. ERRONEOUSLY REPORTED LEAVE | | 47. ERRONEOUSLY REPORTED LOST TIME (30 DAY MONTH) | | 48. ERRONEOUSLY REPORTED LOST TIME (DAY FOR DAY) | | |
| 49. AMPLIFYING REMARKS (MAY BE CONTINUED ON REVERSE) CYMAY11: UA OVER REGULAR LIBERTY FM USS DAHLGREN (DDG 43) FM 0730, CYMAY11. INTENTIONS UNKNOWN. J.R. DOE, LNC, USN, BY DIR OF THE CO CYMAY20: DD 553 ISSUED. MBR'S PERSONAL EFFECTS COLLECTED. J.R. DOE, LNC, USN, BY DIR OF THE CO CYJUN07: SURRENDERED ON BOARD 1910 HOURS THIS DATE. J.R. DOE, LNC, USN, BY DIR OF THE CO | | | | | | |
| J | 50. (SIGNATURE) BY DIRECTION  | | RANK/GRADE J.R. DOE, LNC, USN, BY DIR OF THE CO | | | |
| 51. UNIT I.D. CODE 12345 | | 52. RATE QMSN | | 53. NAME (LAST, FIRST, MIDDLE) PISTOL, VERY C. | | |
| 54. SSN 999-99-9999 | | 55. BRANCH/CLASS USN | | | | |

RECORD OF UNAUTHORIZED ABSENCE NAVPERS 1070/606 (REV. 1-77) S/N 0106-LF-010-6937
☆ U.S. GOVERNMENT PRINTING OFFICE: 1990-282-225/20024

45805

THIRD COPY

Figure 5-18.—Preparation of Record of Unauthorized Absence, NAVPERS 1070/606.

| | | | | | |
|-------------------------|--|---------|--|-----------------|--|
| BUPERS USE ONLY | | P601-7R | | BUPERS USE ONLY | |
| COURT MEMORANDUM | | | | | |
| 38 | | | | | |

| | | | | | |
|--|---|--|---|---|-----------------|
| 1. DATE SUBMITTED CYFEB15 | | 2. SHIP OR STATION AND LOCATION USS CARR (FFG 52) | | | |
| 3. DATE OF REFERRAL | 4. TYPE OF COURT NJP | 5. DATE OF COURT/ MARK CYFEB15 | 6. UCMJ ARTICLE(S) 86 | | |
| 7. DATE OF ACTION CYFEB15 | 8. REPORT OF ACTION <input checked="" type="checkbox"/> | 9. MODIFI- CATION OF ACTION <input type="checkbox"/> | 10. CORRECTION TO PREVIOUS 1070/607 <input type="checkbox"/> | 11. DATE OF SUBMISSION ON 1070/ 607 MOD OR CORRECTED <input type="checkbox"/> | |
| 12. RATE ADJUSTMENT <input type="checkbox"/> | 13. FROM | 14. TO | 15. TIR | | |
| <input checked="" type="checkbox"/> 16. FORFEITURE | 17. MONTHLY AMT. \$ 100.00 | 18. NO. MONTHS 2 | | | |
| 19. FINE <input type="checkbox"/> | 20. AMOUNT \$ | 21. CONSENT TO CHECKAGE <input type="checkbox"/> | 22. DOES NOT CONSENT TO CHECKAGE <input type="checkbox"/> | 23. MO. AMT. OF CHECKAGE \$ | 24. NO. MOS. |
| <input type="checkbox"/> 25. DETENTION | 26. MONTHLY AMT. \$ | 27. NO. MONTHS | 28. DETENTION RE- FUND DATE | | |
| 29. DESERTION MARK REMOVED <input type="checkbox"/> | 30. ADJUDGED <input type="checkbox"/> | 31. ADJUDGED AND DIS- APPROVED <input type="checkbox"/> | | | |
| PRE TRIAL CONFINEMENT 32. FROM | 33. TO | 34. DAYS LOST TIME (30 DAY BASIS) | 35. DAYS LOST TIME (DAY FOR DAY) | | |
| CONFINEMENT ORDERED AND COMPLETED 36. FROM | 37. TO | 38. DAYS LOST TIME (30 DAY BASIS) | 39. DAYS LOST TIME (DAY FOR DAY) | | |
| 40. CHANGE EAOS TO | 41. CHANGE EXP. ENL TO | | | | |

42. SYNOPSIS OF OFFENSE(S), DATE(S), AND SENTENCE ADJUDGED (ALSO AMPLIFYING REMARKS, MAY BE CONTINUED ON REVERSE)

CYFEB15: COMMANDING OFFICER'S NONJUDICIAL PUNISHMENT
 OFFENSE: VIOL UCMJ ART. 86. UA FM 0600, CYJAND1 TO 1000, CYFEB14.
 NONJUDICIAL PUNISHMENT AWARDED: FORFEITURE OF \$100.00 PAY PER
 MONTH FOR TWO (2) MONTHS, 30
 DAYS' RESTRICTION AND 30 DAYS'
 EXTRA DUTY.

DATE IDENTIFICATION AND RESUME OF CONVENING, SUPERVISORY, OR OTHER AUTHORITY INCLUDING ACTION UNDER
 ARTICLES 65, 66, 67, 69, 72, 73, 74, OR 15 (D) OR (E), UCMJ, (ALSO ANY APPEAL)

| | | |
|--|------------------|--------------------|
| | 43. 1070/607 DTD | 44. AUTHORITY TYPE |
|--|------------------|--------------------|

(MAY BE CONTINUED ON REVERSE)

| | | |
|--|------------------------|--------------------------|
| <div style="border: 1px solid black; padding: 5px; display: inline-block;"> </div> | | GRADE |
| J.R. DOE, LNC, USN, BY DIR OF THE CO | | |
| 47. UNIT I.D. CODE 44444 | 48. RATE SA | |
| 49. NAME (LAST, FIRST, MIDDLE) LINE, PULL A. | 50. SSN 666-66-6666 | 51. BRANCH, CLASS USN |

COURT MEMORANDUM NAVPERS 1070/607 (REV. 12-75) S-N 0106-LF-010 6960

U.S. GOVERNMENT PRINTING OFFICE: 1986 491 648 T-40037

ACTIVITY FILE

Figure 5-19.—Preparation of Court Memorandum, NAVPERS 1070/607, reflecting NJP punishment for UA over 24 hours.

SHIP OR STATION

NAVAL STATION, CHARLESTON, SOUTH CAROLINA

1 Jul CY: COMMANDING OFFICER'S NONJUDICIAL PUNISHMENT

DATE OF OFFENSE: 30 June 19CY

NATURE OF OFFENSE: Viol of Station Order 1-91. Driving a motor vehicle in excess of posted speed limits.

DATE OF CAPTAIN'S MAST: 1 July 19CY

NONJUDICIAL PUNISHMENT AWARDED: Two weeks' restriction to the limits of the station.

Seaman Smith signed JAG Manual, appendix A-1-d, prior to his captain's mast which was held on 1 July 19CY.

The accused talked to a lawyer prior to deciding to demand trial by court-martial in lieu of captain's mast. The accused was advised that acceptance of nonjudicial punishment does not preclude further administrative action. In completing the remainder of the form, the accused did not demand trial by court-martial in lieu of nonjudicial punishment.

NOTE: If the accused was represented by a military or civilian lawyer as a personal representative at mast, the following example would be used in place of the one appearing above:

Seaman Smith received punishment at captain's mast on 1 July 19CY. The accused was represented by a lawyer.

JACK N. JILL, LNC, USN
 By direction of the Commanding Officer

| | | |
|--|--------------------|-------------------------|
| NAME (Last, First, Middle) Smith, John A. | SSN 333-33-3333 | BRANCH AND CLASS USN |
|--|--------------------|-------------------------|

13 ☐

Figure 5-20. Preparation of Page 13, NAVPERS 1070/613, reflecting NJP results.

For other punishments that do not affect the pay of an individual (extra duty, restriction, or arrest in quarters), it is good administrative practice to spell out in writing the specific orders on these types of punishment even though there are no specific regulations requiring anything more than a notation in the proper block on the

NAVPERS 1626/7. Figures 5-21 and 5-22 show samples of orders to carry out when extra duty and restriction have been awarded as a result of CO's mast.

In some cases involving restriction, your command may not have the facilities to properly administer restriction. In such cases, you should make arrangements

DEPARTMENT OF THE NAVY
NAVAL BASE
NORFOLK, VIRGINIA 23511

Date

From: Commanding Officer, Naval Base, Norfolk, Virginia
To:

Subj: ORDERS TO CARRY OUT NONJUDICIAL PUNISHMENT

Ref: (a) Manual for Courts-Martial, 1984
(b) U.S. Navy Regulations, 1990

1. You appeared at commanding officer's nonjudicial punishment this date and have been awarded _____ days' extra duty.
2. Immediately upon receipt of these orders, you will report to the Chief Master-at-Arms (CMAA), Building 27, Naval Base, Norfolk, Virginia, and under his supervision perform the above extra duty. In the event you are not able to perform extra duty because of a watch, being in sick bay, et cetera, at the time specified by the CMAA, you will have your leading petty officer notify him in person or by calling extension 1111 during regular working hours and extension 1000 after normal working hours, Saturdays, or on holidays.
3. The CMAA will supervise the extra duty to be performed according to references (a) and (b).
4. The hours of extra duty will be reasonable, not less than 2 hours per day, and will be performed outside of normal duties and working hours. Extra duty will not be performed on Sunday although Sunday counts in the computation of the period for which such punishment is imposed.
5. Any failure to carry out these orders will result in further disciplinary action.
6. Upon completion of this punishment, the CMAA will notify the commanding officer, via the discipline officer, that such punishment has been completed.

Discipline officer
By direction

I have read the above orders to the individual named and have delivered to him one copy.

Discipline officer/Master-at-Arms

Copy to:
CMAA
Accused's LPO

Figure 5-21.-Sample letter of orders to carry out NJP punishment of extra duty.

DEPARTMENT OF THE NAVY
NAVAL BASE
NORFOLK, VIRGINIA 23511

Date

From: Commanding Officer, Naval Base, Norfolk, Virginia
To:

Subj: INSTRUCTIONS FOR CARRYING OUT PUNITIVE RESTRICTION

1. You appeared at commanding officer's nonjudicial punishment this date and have been awarded _____ days' restriction without suspension from duty.
2. The limits of your restriction are the confines of the Naval Base, Norfolk, Virginia proper. This excludes any recreational facilities on board the base.
3. You will report and muster at the following times:
With the Master-at-Arms, Building 27
Weekdays: 0745, 1230, and 1600
With the OOD, Quarterdeck, Building 27
Weekdays: 2000 and 2200
Saturdays, Sundays and Holidays: 0745, 1000, 1230, 1400, 1600, 2000, and 2200
The above musters will be in the uniform of the day.
4. Additional rules on your restriction will be found on the reverse side of this form. You will read these additional instructions and sign the acknowledgement below.

Discipline office
By direction

I have read and fully understand the instructions on my restriction and I hereby acknowledge receipt of one (01) signed original of these orders.

Witness

Signature of person being restricted

DISTRIBUTION:

Original to person being restricted
CMAA
OOD
Discipline officer

Figure 5-22.—Sample letter of instruction for carrying out punitive restriction.

with the nearest command that does have the facilities to properly administer restriction, and in these cases you may be required to prepare TEMADD orders for the period of punishment.

UNIT PUNISHMENT BOOK

The UPB contains a record of all NJP hearings conducted by a command, not just those in which punishment was awarded, and is required by the MILPERSMAN. The form that is used to record NJP hearings is the NAVPERS 1626/7. When all actions have been completed on a particular NJP hearing, the space provided in the final administrative action portion of the NAVPERS 1626/7 (see section J of fig. 5-1) that indicates when the case record is filed in the UPB should be filled out. Though there is no requirement to do so, it is good administrative practice to attach all relevant documents on that particular case to the NAVPERS 1626/7.

There are no specific instructions as to what manner these cases should be filed in the UPB; however, the suggested procedure is to file cases in alphabetical order, chronological order by date, or a combination of both.

LOG ENTRIES

The *Standard Organization and Regulations of the U.S. Navy*, (SORM), OPNAVINST 3120.32B,

prescribes the log entry for mast results afloat. Such an entry should be substantially in the format for the POD entry, and you should provide this information to the officer of the deck (OOD) for inclusion in the deck log. Although there is no Navywide requirement for logbooks ashore, you will find that logs are kept ashore pursuant to local instructions. Unless these local instructions require a different format, you should provide information about the mast results to the OOD in the same format that is used afloat.

SUMMARY

NJP is the lowest form of discipline available to COs to aid them in maintaining good order and discipline within the Navy. As you can see from the preceding discussions, there are many considerations when the various aspects of NJP are carried out. It is important for you, as an LN, to keep abreast of all the requirements and procedures associated with the proper administration of NJP because of its effect upon individuals as well as its effect upon the Navy.

A checklist for report chit/NJP processing, figure 5-23, is provided for you as a guide in helping you to carry out all the responsibilities inherent in NJP proceedings.

CHECKLIST FOR REPORT CHIT/NJP PROCESSING

The following process assumes that the command has a local report chit or system for reporting offenses and conducting the preliminary inquiry before the preparation of a NAVPERS 1626/7 for use at XOI or CO's mast.

A. BEFORE CO's MAST

1. Log local report into the logbook. (A log should be used for tracking the report through your command.)
2. Send local report and request for preliminary inquiry and recommendation as to disposition to SNM's department head.
3. If returned recommending XOI or mast, check service record out from personnel or PSD.
4. Review service record to make sure all pages are there and to determine if SNM is on any suspended sentence, is in a frocked paygrade, or has been given an administrative separation warning.
5. Prepare NAVPERS 1626/7 and appropriate acknowledgement of rights from JAG Manual. If a UA case, make sure you have a page 601/6R or page 13.
6. Attach preliminary inquiry report, including statements and other evidence, to report chit.
7. Contact and inform the accused of all rights and let him or her inspect the evidence. (If shore-based, set up appointment with defense counsel if accused wants to consult with counsel.)
8. Inform accused, his or her supervisors, and witnesses of time and place of XO's/CO's mast.

B. AFTER CO's MAST

1. Make sure CO has completed section of NAVPERS 1626/7 entitled Action of the Commanding Officer.
2. Inform accused of right to appeal NJP. Make sure accused signs the appropriate forms. Make sure NAVPERS 1626/7 is modified to reflect the 5-day time limit vice 15 days that is preprinted on NAVPERS 1626/7.
3. Prepare necessary service record entries.
 - a. Service record entries required when the commanding officer EXCUSES or DISMISSES the offense(s):
 - (1) When the service record contains an entry regarding UA, an entry must be made to show what action was taken. If the UA is less than 24 hours, a page 13 entry is required.
 - (2) If UA is more than 24 hours, completion of a page 601-6R is required.
 - (3) For all other offenses EXCUSED or DISMISSED, no service record entry is required. If UA offense excused or dismissed, page 13 is required to reflect the disposition.
 - b. When mast results in a decision to refer charges to trial by summary or special court-martial, prepare a charge sheet (DD 458). No service record entry is required.
 - c. When mast results in a decision to refer charges to a pretrial investigation under Article 32, no service record entry is required.
 - d. Required service record entries if punishment imposed:
 - (1) Punishments NOT including reduction or forfeiture of pay:
 - (a) NAVPERS 1070/613 (page 13)
 - (b) NAVPERS 1070/609 (page 9)

Figure 5-23.—Checklist for report chit/NJP processing.

(c) NAVPERS 1070/606 (page 6) - Must be completed in UA cases in excess of 24 hours. Since UA of 24 hours or more is lost time, completion of the page 6 (blocks 1 and 2, 38 through 42, and block 50) must be timely and accurate. Strict adherence to the DAPMAN, section 90435, is mandatory.

(2) Punishment including reduction or forfeiture of pay:

(a) NAVPERS 1070/607 (page 7)

(b) NAVPERS 1070/609 (page 9)

(c) NAVPERS 1070/604 (page 4) if reduction awarded.

(d) NAVPERS 1070/606 (page 6) to be completed in UA cases in excess of 24 hours as outlined above.

(e) If reduction and forfeitures, make sure forfeitures are based on reduced paygrade (even if reduction suspended). NOTE: *Manual of Advancement*, BUPERSINST 1430.16D, section 301.12.17 states that all lost time in excess of 15 days as a result of UA, sick, misconduct, confinement, or so on, is not creditable in computing service in paygrade. When cumulative lost time is in excess of 15 days in the same paygrade, adjust TIR date by adding the number of lost days, ONLY if there has been NO REDUCTION IN RATE.

(3) Punishments involving reduction or forfeiture of pay that are suspended:

(a) NAVPERS 1070/613 (page 13) if punishment awarded pertains to RIR or FF and was suspended.

(b) NAVPERS 1070/607 (page 7) if one or more types of punishment awarded are suspended, but still included at least one punishment not suspended that pertains to pay.

(c) NAVPERS 1070/609 (page 9) if reduction is awarded.

(d) NAVPERS 1070/604 (page 4) if reduction is awarded.

(4) Punishments involving restraint:

(a) Correctional custody. If CC is awarded at mast, prepare TEMADD orders. NOTE: The accused will be escorted to the local medical facility for a preconfinement physical. This is a function of the master-at-arms.

(b) Restriction to limits. If restriction is imposed, restriction papers need to be typed. Usually this is on a local preprinted form, necessitating only the completion of the accused's name, rate, and social security number. It will show the boundaries of restriction, times, dates and places for muster, and is signed by someone authorized to do so.

(c) Extra duty. If extra duty is imposed, virtually the same procedure as in (b) above will be used. Again, notification is by preprinted locally prepared form that defines the extra duty, the time it will be accomplished, to whom the accused reports, and any extra instructions necessary.

(d) Confinement on bread and water. Prepare confinement orders for bread and water. The accused must be given a confinement physical and found to be fit for confinement on bread and water.

(e) File documents in UPB and, after all action (including any appeal), make sure it is complete.

(5) Remission, mitigation, or setting aside of NJP:

(a) The DAPMAN contains block-by-block instructions for preparation of NAVPERS 1070/607 for these actions.

(b) Refer to the DAPMAN for instructions to mitigate, reinstate, or set aside the punishment for members who have previously been reduced in rate.

Figure 5-23.-Checklist for report chit/NJP processing—Continued.

C. MISCELLANEOUS MATTERS

1. If the CO's NJP results in a restraint-type punishment, the details must be furnished to the OOD for inclusion in the deck log.
2. Prepare notice for POD. If it is the policy of commands to publish the results of CO's NJP in the command POD, strict compliance with the JAGMAN is mandatory. (It is suggested that names of the offenders be omitted if the information may be disseminated to civilians.) In no instance will the social security number of an individual be used in the publication of NJP results. (See SECNAVINST 5211.5.)
3. If appropriate, prepare page 13—warning member of consequences of future misconduct.
4. If a basis for administrative discharge applies, determine if command wants to process member for discharge.

D. NJP APPEALS

1. After receipt of accused's appeal, prepare written endorsement for the CO's signature. Include a copy of NAVPERS 1626/7, copies of all statements or evidence used at mast, and copy of page 9 from accused's service record (with all endorsements).
2. Indicate appeal on NAVPERS 1626/7.
3. If no response to appeal is received from appeal authority within 5 days to accused's appeal, then restraint punishments must be stayed if accused has requested this.

E. OFFICER'S NJP

1. Before taking an officer to NJP, check with regulations promulgated by the type commander regarding any additional requirements or procedures required by him or her. (Many want notification before the NJP hearing. CINCPACFLT commands must have a prompt verbal report of all incidents of officer misconduct to CINCPACFLT.)
2. If an officer is awarded NJP, then a disciplinary report must be sent to NMPC 82. (The MILPERSMAN contains the applicable provisions.)
3. If the officer is also being detached for cause, consult the MILPERSMAN for the provisions for this procedure.

Figure 5-23.-Checklist for report chit/NJP processing—Continued.